Multiple Documents

Part	Description
1	40 pages
2	Exhibit A - Notice Letter, Nov. 20, 2015
3	Exhibit B - Notice Letter, Dec. 17, 2015

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STEVEN WAYNE FISH, RALPH ORTIZ, DONNA BUCCI, CHARLES STRICKER, THOMAS J. BOYNTON, DOUGLAS HUTCHINSON, AND THE LEAGUE OF WOMEN VOTERS OF KANSAS, on behalf of themselves and all others similarly situated, Plaintiffs, v. KRIS KOBACH, in his official capacity as Secretary of State for the State of Kansas; and NICK JORDAN, in his official capacity as Secretary of Revenue for the State of Kansas, Defendants.	Case No. 2:16-cv-02105 CLASS ACTION COMPLAINT

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, on behalf of themselves and all others similarly situated, by and through undersigned counsel, for their Complaint for Injunctive and Declaratory Relief, allege upon knowledge as to their own conduct and upon information and belief as to the conduct of others, as follows:

I. INTRODUCTION

1. Named Plaintiffs bring this action for declaratory and injunctive relief, under the National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511 (hereinafter the "NVRA") and the Elections Clause and Fourteenth Amendment of the Constitution, on behalf of themselves and tens of thousands of Kansas residents who are being prevented from exercising their fundamental right to vote due to Defendants' unlawful policies and practices. Since 2013,

Defendants have acted to undermine the NVRA's accessible registration system by illegally demanding that Kansans who attempt to register to vote while applying for or renewing a driver's license produce documents like a birth certificate or U.S. passport in order to become registered. Over the last three years, Defendants have placed more than 35,000 would-be Kansas voters on a "suspense list." Of these individuals, approximately 22,000 remain suspended or have been purged altogether from the registration system, solely because they purportedly did not submit documentary proof of citizenship. This requirement has upended the registration of voters in Kansas, such that nearly 14% of all new registrants have been stymied as a result of Defendants' policies. One Plaintiff, Ralph Ortiz, is a U.S. military veteran who, after thirteen years of service, sought to make a permanent home in Kansas, only to find himself barred from registering to vote by Defendants' illegal application of a documentary proof-of-citizenship requirement. Defendants have created a needless, bureaucratic maze of barriers to registration that has already deterred many Kansans from participating as voters. Defendants have implemented these disruptive measures in the face of directly contrary Supreme Court precedent. These actions are unlawful and must be halted.

2. Plaintiffs challenge two legal provisions in this case. *First*, this action challenges Defendants' application of Kan. Stat. Ann. § 25-2309(*l*) (hereinafter the "documentary proof-of-citizenship law" or "DPOC law"), which unlawfully requires Kansans who attempt to register to vote in conjunction with a motor vehicle driver's license application to submit documentary proof of United States citizenship. *Second*, this action challenges Defendants' application of Kan. Admin. Regs. § 7-23-15, an administrative rule that improperly purges voters who have duly registered under the NVRA if they fail to provide evidence of citizenship within 90 days of receipt of their registration application (the "90-day purge rule"). The Plaintiffs and tens of

thousands of other eligible Kansas voters who submitted valid and complete voter registrations in accordance with federal law have been effectively disenfranchised by the two challenged provisions.

3. Section 5 of the NVRA requires that every state driver's license application "serve as an application for voter registration with respect to elections for Federal office." 52 U.S.C. § 20504(a)(1) ("Section 5"). Individuals who apply to register to vote in conjunction with an initial application for or renewal of a driver's license (hereinafter, "motor-voter registrants") may establish their eligibility to vote via a signed attestation, under penalty of perjury, that the applicant meets the citizenship requirement for voting. *See* 52 U.S.C. § 20504(c)(2)(C). Section 5 of the NVRA prohibits states from requiring anything beyond "the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration." 52 U.S.C. § 20504(c)(2)(B). A state may not alter or add to the minimum requirements for registering to vote in conjunction with a driver's license application. Moreover, Section 5 of the NVRA expressly provides that, other than a signature, a state "may not require any information that duplicates information required in the driver's license portion of the form." 52 U.S.C. § 20504(c)(2)(A).

4. Notwithstanding the requirements of federal law, Kansas's DPOC law requires that motor-voter registrants submit documentary proof of citizenship in order to become registered to vote. And, despite the NVRA's prohibition on requiring duplicative information from motor-voter registrants, Kansas has required many motor-voter applicants to submit citizenship documents *twice* in order to become registered: once at the DMV, and again to an elections official.

5. The DPOC law has had a devastating effect on voter registration in the state. Within months of the effective date of the DPOC law, more than 15,000 Kansans were blocked from registering to vote because they had purportedly failed to provide documentary proof that they were United States citizens in accordance with the DPOC law.[1] Their names were placed on a "suspense" list of individuals who had submitted voter registration forms that the State deemed incomplete. Upon information and belief, of these more than 15,000 voters, approximately 87 percent had attempted to register at a Kansas driver's license facility.[2]

6. The problem has only grown worse. Upon information and belief, as of December 11, 2015, more than 35,000 voters were on the suspense list due to the documentary proof-of-citizenship requirement. They constituted approximately 14% of all individuals who, as of that date, had attempted to register to vote since the DPOC law went into effect on January 1, 2013. These voters are disproportionately young: as of December 11, 2015, voters between the ages of 18 and 29 constituted more than 44% of the voters on the suspense list due to purported failure to provide documentary proof of citizenship, a percentage that far outstrips their share among eligible or registered voters. Most of the suspended voters are also unaffiliated: almost 54% of voters on the suspense list due to purported failure to provide documentary proof of citizenship were unaffiliated with any political party.

7. In response to the high numbers of suspended voters, Defendants have acted to reduce the numbers on the suspense list by both 1) purging registrants who remained suspended for longer than 90 days and 2) independently verifying citizenship documentation for individuals

[1] *See* Brad Cooper, *Would-be Voters Are Exasperated by Kansas's New Registration Law*, Kan. City Star (Sept. 2, 2013), http://www.kansascity.com/news/local/article326552/Would-be-voters-are-exasperated-by-Kansas%E2%80%99-new-registration-law.html.

[2] *See id.*

born in Kansas while declining to provide the same services for individuals born outside of Kansas. Both of these actions are unlawful.

8. *First*, in October 2015, an administrative rule promulgated by Defendant Secretary of State Kobach went into effect, which, *inter alia*, removes individuals from the suspense list if they fail to provide documentary evidence of citizenship within 90 days of submitting a registration form, and cancels their registrations. *See* Kan. Admin. Regs. § 7-23-15. Upon information and belief, thousands of Kansans who submitted valid voter registration applications in conjunction with a driver's license application or renewal were nevertheless placed on the suspense list for purported failure to submit documentary proof of citizenship, and have now been purged from the voter system.

9. *Second*, Defendants have begun coordinating with the Kansas Department of Health and Environment to check birth certificates on file with the agency and register suspended voters who were born in Kansas. Defendants do not verify vital records on file with agencies outside of Kansas and thus do not treat Kansas voters born outside the State on an equal basis as those born within the State. These selective registration efforts are unlawfully discriminatory and infringe upon the right to travel protected by the Fourteenth Amendment of the Constitution.

10. In sum, Defendants' actions violate federal law. Tens of thousands of eligible Kansans have applied to register to vote as prescribed by federal law, only to be stymied by Defendants. Plaintiffs therefore respectfully ask the Court to declare that the documentary proof-of-citizenship law, Kan. Stat. Ann. § 25-2309(*l*), and the 90-day purge rule, Kan. Admin. Regs. § 7-23-15, are invalid with respect to eligible voters who sought to register in conjunction with a driver's license application. Plaintiffs further respectfully ask that the Court order that they and all other similarly-situated voters be registered to vote in federal elections. Plaintiffs also

respectfully ask that the Court order Defendants to verify vital records and documentary proof of citizenship on file with agencies outside of Kansas as Defendants do with the Kansas Department of Health and Environment. Finally, Plaintiffs respectfully ask the Court to enjoin Defendants and the State of Kansas from the continued enforcement of the DPOC law and the 90-day purge rule with respect to motor-voter registrants, and award all other relief that the Court deems just and proper.

II. PARTIES

A. Individual Plaintiffs

11. The Individual Plaintiffs named in this Complaint are Steven Wayne Fish, Ralph Ortiz, Donna Bucci, Charles "Tad" Stricker, Thomas J. "T.J." Boynton, and Douglas Hutchinson. Each of the Individual Plaintiffs is a citizen of the United States, a resident of Kansas, and a qualified elector eligible to vote in local, state, and federal elections in Kansas. Each of the Individual Plaintiffs submitted a valid and complete voter registration application in conjunction with a driver's license application (including those who applied for renewals) in accordance with the NVRA but was placed on the suspense list for purportedly failing to submit documentary proof of citizenship.

12. Plaintiff Steven Wayne Fish is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. Mr. Fish is 36 years old and lives in Lawrence. He was born on a U.S. military base in Illinois that has since closed, and moved to Kansas as a young child. In 2014, he sought to register to vote at a DMV office while renewing his driver's license, and brought with him his valid but expiring license. Mr. Fish completed the paperwork to register to vote, but did not bring documentary proof of citizenship, which was unnecessary for renewal of his license. He was subsequently placed on the suspense list for voter registration. Mr. Fish looked for his birth certificate but has not been able to locate it. Because he does not

have and does not know how to obtain his birth certificate, Mr. Fish did not submit documentary proof of citizenship to the State within 90 days of applying to register to vote, but remains on the suspense list. As a result, Mr. Fish did not attempt to vote in the November 2014 midterm election because he understood that his voter registration would not be deemed complete without documentary proof of citizenship, which he cannot produce.

13. Plaintiff Ralph Ortiz is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. Mr. Ortiz is 35 years old and lives in Wichita. He is a veteran of the United States Air Force, in which he served for 13 years. Mr. Ortiz was born in New York State, and has lived in several different states during his service in the Air Force. In 2006, he was stationed in Kansas and obtained a Kansas driver's license shortly thereafter. He left the service in 2013, at which time he chose to remain in Kansas, and has resided in Kansas ever since. In 2014, he went to a DMV office to renew his driver's license, and, because he had decided to remain living in Kansas, he sought to register to vote as a Kansas voter. He did not provide documentary proof of citizenship at that time, because such documentation is unnecessary for renewal of a Kansas driver's license. He was subsequently placed on the suspense list for failure to provide documentary proof of citizenship, making him ineligible to vote. He did not submit documentary proof of citizenship to the State within 90 days of applying to register to vote, and has been purged from the voter registration system.

14. Plaintiff Donna Bucci is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. Ms. Bucci is 57 years old and lives in Wichita. Ms. Bucci was born in Maryland. She has resided in Kansas for approximately five years. In 2013, she renewed her driver's license and attempted to register to vote at a DMV office. Ms. Bucci was subsequently placed on the suspense list for failure to provide documentary proof of citizenship.

She received a notice in the mail and a phone call notifying her that she would need to provide documentary proof of citizenship to complete her voter registration application. Ms. Bucci, however, does not possess a copy of her birth certificate, and the fee of more than $20 required to retrieve a new birth certificate from the state of Maryland poses a significant financial burden for her. Ms. Bucci did not submit documentary proof of citizenship to the State within 90 days of applying to register to vote, and she has yet to do so, because she continues to lack such documentation. As a result, Ms. Bucci was unable to vote in the November 2014 midterm election. She has now been purged from the voter registration system.

15. Plaintiff Charles "Tad" Stricker is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. Mr. Stricker is 37 years old and lives in Wichita. He was born in Missouri and moved to Kansas because he and his wife wanted to live closer to her family. In 2014, he went to a DMV office to obtain a Kansas license and to register to vote in Kansas in time for the midterm elections. Because of the various documentation requirements for a driver's license, Mr. Stricker had to go to the DMV office twice to complete his driver's license application, and by the time he had completed that process, he believed he had also been registered to vote. But when Mr. Stricker went to vote in the November 2014 midterm election, he discovered that he was not on the rolls and was forced to cast a provisional ballot. His vote was not counted in that election. Only after the election did he receive a notice from the State indicating that he needed to submit proof-of-citizenship documentation. Thus, although Mr. Stricker has already submitted documents sufficient to establish his citizenship while applying for his driver's license, the State refused to register him to vote unless he provided such documentation a second time, to an elections official. Mr. Stricker did not submit such

additional citizenship documentation to the State within 90 days of applying to register to vote, and has now been purged from the voter registration system.

16. Plaintiff Thomas J. "T.J." Boynton is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. He is 35 years old and lives in Wichita. He was born in Illinois and moved to Kansas in 2014. That year, he went to the DMV to apply for a Kansas driver's license. He provided his valid out-of-state license, his social security card, and an original birth certificate. He also applied to register to vote during the same visit, and he believed his registration was complete along with his driver's license application. But when he attempted to vote in the November 2014 midterm election, the poll workers could not find him on the rolls and forced him to cast a provisional ballot, which was not counted. Mr. Boynton subsequently learned that his name was on the suspense list, even though he had provided documentary proof of citizenship when he initially applied for a Kansas driver's license, and that he would not be registered to vote unless he submitted documentary proof of citizenship a second time, this time to a Kansas elections official. He has now been purged from the Kansas registration system.

17. Plaintiff Douglas Hutchinson is a United States citizen and satisfies all of the eligibility requirements for voting in Kansas. Mr. Hutchinson is 46 years old. He was born in Colorado Springs, Colorado, but has lived in Kansas for nearly his entire life. In the spring of 2013, he went to the DMV in Mission, Kansas, to renew his Kansas driver's license. At that time, he also indicated that he wanted to register to vote. He was not required to show documentary proof of citizenship (or proof of legal presence) at that time. He never received any notice from the Johnson County Elections Office or any other government office advising him that his voter registration was incomplete or in suspense status. After learning of the

documentary proof-of-citizenship requirement, he went back to the DMV office in Mission, Kansas in the summer of 2015 and produced his U.S. passport. Mr. Hutchinson was advised that he had done all that was necessary to complete his voter registration. Nevertheless, he subsequently remained on the suspense list for purported failure to provide documentary proof of citizenship.

B. Organizational Plaintiff

18. Plaintiff League of Women Voters of Kansas (the "Kansas League") is a nonpartisan, volunteer, community-based organization that, for more than 90 years, has encouraged informed and active participation of citizens in government and worked to influence public policy through education and advocacy. Originally founded in Wichita in 1920, the Kansas League is active throughout Kansas, with nine local affiliates and nearly 800 members. The Kansas League is separately incorporated but affiliated with the League of Women Voters of the United States.

19. The Kansas League has a long history of supporting voter registration and voter education efforts. Under its original Charter, the Kansas League's mission is "[t]o develop an intelligent and active electorate in Kansas, and to do any lawful acts appropriate to furthering such purpose." The organization believes that democratic government depends upon informed and active participation in government and that every citizen should be protected in the right to vote. In furtherance of this mission, the Kansas League conducts voter registration drives, distributes information about the electoral process, and promotes electoral laws and practices that encourage voter participation. Members have taught classes on the importance of the vote and have helped to register high school seniors and vocational-technical and college students at their schools. The Kansas League has often focused on communities with a history of lower

participation in elections and people who are less likely to have proof of citizenship, such as minorities, women, students, younger voters, the poor, and the elderly.

20. The Kansas League's efforts mirror the NVRA's stated goals of "increas[ing] the number of eligible citizens who register to vote in elections for Federal offices" and implementing procedures at all levels of government to "enhance[] the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501. Consistent with those efforts, the Kansas League was a party-intervenor in related litigation under the NVRA: *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183 (10th Cir. 2014).

21. The DPOC law has adversely impacted both the Kansas League and its members. The DPOC law has directly interfered with the organization's core commitment to conducting voter registration drives and assisting voters in becoming registered. Prospective registrants typically do not have acceptable documentary proof of citizenship (most commonly birth certificates or passports) with them in locations where the Kansas League has historically done voter registration drives, such as college campuses. As a result, the organization has been able to register far fewer individuals at their voter registration drives. The Kansas League is further hindered in its ability to register voters due to the risk of legal liability associated with copying, retaining and disposing of proof of citizenship documents. These concerns have stopped several local affiliates of the Kansas League from conducting voter registration activities altogether, thereby directly frustrating the organization's mission.

22. The Kansas League has also been forced to divert its limited resources toward contacting the tens of thousands of motor-voter registrants on the suspense list and attempting to help them satisfy the DPOC law. The Kansas League has dedicated large amounts of volunteer hours attempting to educate citizens and help them meet the DPOC requirement. The DPOC law

makes it take much longer to register voters who previously would have been registered seamlessly when they applied for a driver's license at the DMV. The League has expended substantial funds and resources producing a video and printing thousands of flyers to educate the public regarding registration barriers imposed by the DPOC law. All of these activities have diverted the Kansas League away from its core public policy priorities and required it to expend ever more resources on voter registration. If Defendants had not suspended such large numbers of motor-voter registrants, the Kansas League would be much freer to pursue its central priorities.

C. Defendants

23. The Defendants named herein are named only in their official capacities and are named as the State and local officials responsible for the implementation and enforcement of the DPOC law and the 90-day purge rule.

24. Defendant Secretary of State Kris Kobach (hereinafter "Defendant Secretary Kobach," "Defendant Kobach," or "Secretary Kobach"), is the Secretary of State of Kansas, and in that capacity is the State's chief election official responsible for overseeing all Kansas elections. Defendant Secretary Kobach is charged with the general supervision of Kansas election laws and the implementation of the DPOC law, Kan. Stat. Ann. § 25-2309(*l*), and promulgated the 90-day purge rule, Kan. Admin. Regs. § 7-23-15.

25. Defendant Nick Jordan is the Kansas Secretary of Revenue (hereinafter "Defendant Secretary Jordan," "Defendant Jordan," or "Secretary Jordan"). As Secretary of Revenue of Kansas, Defendant Secretary Jordan is the State's chief official in the Department of Revenue, which includes the Division of Motor Vehicles. Kan. Stat. Ann. § 75-5110.

III. CLASS ALLEGATIONS

26. Plaintiffs seek class certification under Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2).

27. The first class is defined as: all eligible Kansas motor-voter registrants who do not currently appear on the active voter registration list due to purported failure to submit documentary proof of citizenship under Kan. Stat. Ann. § 25-2309(*l*). Members of the proposed class include some individuals placed on the suspense list even though they in fact provided documentary proof of citizenship in conjunction with their driver's license applications, as well as individuals who have been removed from the suspense list due to the 90-day purge rule.

28. The second class is defined as: all Kansas residents eligible to vote who have submitted a registration application but do not currently appear on the active voter registration list due to purported failure to submit documentary proof of citizenship under Kan. Stat. Ann. § 25-2309(*l*) and who do not have documentary proof of citizenship records under their current name on file with State agencies in Kansas. The proposed class encompasses members who were born outside of Kansas and do not have birth records on file with the Kansas Department of Health and Environment or other Kansas agencies. The proposed class also includes members who were born within Kansas but subsequently changed their name through marriage or other means while outside the State of Kansas.

29. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are easily satisfied here:

a. The class is sufficiently numerous such that joinder of all members is impracticable. Indeed, an estimated 22,000 Kansans are currently on the suspense list or have been purged from the voter registration lists due to the documentary proof-of-citizenship requirement.

b. There are questions of law and questions of fact common to the members of both classes. For the first class, these questions include whether Defendants' application of the DPOC law violates the NVRA and is preempted by the Elections Clause of the Constitution, U.S. Const. Art. I, § 4, cl. 1, and whether Defendants' removal of suspended motor-voter registrants from the voter list due to a purported failure to provide documentary proof of citizenship violates NVRA protections against registration purges. For the second class, these questions include whether Defendants' selective efforts to verify documentary proof of citizenship on file with Kansas agencies unlawfully discriminates against Kansas residents who were born outside of the State.

c. The claims of the named Individual Plaintiffs are typical of the claims of the class. For the first class, they have each been placed on the suspense list and not duly registered to vote for failure to produce documentary proof of citizenship. For the second class, the Individual Plaintiffs were all born outside of Kansas and have either remained on the suspense list or been purged by Defendants.

d. The named Individual Plaintiffs will fairly and adequately protect the interests of all members of the two proposed classes and seek relief on behalf of each class as a whole, and have no interests antagonistic to other members of the class. The Individual Plaintiffs are all represented by *pro bono* counsel, including the American Civil Liberties Union ("ACLU") Foundation's Voting Rights Project and Dechert LLP who collectively have

substantial experience in class action litigation generally, including litigation regarding voting rights and constitutional law, and litigation under the NVRA in particular.

e. Prosecuting separate actions by individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants; or (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests. Additionally, by denying the right to vote to eligible Kansas motor-voter registrants who submitted a valid and complete voter registration form under Section 5 of the NVRA, due to purported failure to comply with the documentary proof-of-citizenship requirement under Kan. Stat. Ann. § 25-2309(*l*), Defendants have acted or refused to act on grounds that apply generally to the class. By failing to coordinate with out-of-state agencies to verify citizenship documents for suspended registrants born outside of Kansas, Defendants have further acted or refused to act on grounds that apply generally to the class.

IV. BACKGROUND AND FACTUAL ALLEGATIONS

A. The National Voter Registration Act of 1993

30. In enacting the NVRA in 1993, Congress found that the right to vote "is a fundamental right"; that the state governments have a "duty . . . to promote the exercise of that right"; and that "unfair registration laws and procedures can have a direct and damaging effect

on voter participation." 52 U.S.C. § 20501(a). Congress therefore enacted the NVRA to, *inter alia*, "increase the number of eligible citizens who register to vote in elections for Federal office" and "enhance[] the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b).

31. The NVRA is sometimes referred to as the "Motor-Voter Law" because of its well-known provision requiring states to provide voter registration services in conjunction with driver's license applications. The statute requires that states provide and maintain at least three separate channels for voter registration: (1) by application "made simultaneously with an application for a motor vehicle driver's license"; (2) by mail with a federally-promulgated voter registration form; and (3) through various state offices designated as voter registration agencies, including those offices that provide public assistance. *See* 52 U.S.C. § 20503(a); §§ 20504–20506.

i. Section 5 of the NVRA: Voter Registration in Conjunction with Application for a Driver's License

32. Section 5 of the NVRA governs voter registration in conjunction with driver's licenses and is titled "Simultaneous application for voter registration and application for motor vehicle driver's license." 52 U.S.C. § 20504. It requires that "[e]ach State motor vehicle driver's license application (including any renewal application) . . . shall serve as an application for voter registration with respect to elections for Federal office." 52 U.S.C. § 20504(a)(1). The statute requires "[e]ach State [to] include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license." 52 U.S.C. § 20504(c)(1). The statute further provides that each state "shall . . . ensure that any eligible applicant is registered to vote in an election" so long as a "valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority" within a specified

timeframe – *i.e.*, "the lesser of 30 days" before the election, or the deadline "provided by State law [for registration] before the date of the election." 52 U.S.C. § 20507(a)(1)(A).

33. Section 5 sets forth various requirements for the contents of the form that a state must use for voter registration in conjunction with a driver's license application. For example, the statute prohibits requiring duplicative information: the voter registration component for driver's license applicants "may not require any information that duplicates information required in the driver's license portion of the form" other than a signature. 52 U.S.C. § 20504(c)(2)(A). The statute also limits the information that may be required on a motor-voter application to "only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration." 52 U.S.C. § 20504(c)(2)(B).

34. Section 5 of the NVRA delineates information a motor-voter application must include: the "voter registration application portion of an application"

> (C) shall include a statement that--
> (i) states each eligibility requirement (including citizenship);
> (ii) contains an attestation that the applicant meets each such requirement; and
> (iii) requires the signature of the applicant, under penalty of perjury.

52 U.S.C. § 20504(c)(2)(C).

35. Congress considered these safeguards sufficient to prevent unlawful voter registration. The Senate Report to the NVRA specifically declared that the Senate was "confident that this Act provides sufficient safeguards to prevent noncitizens from registering to vote." S. Rep. No. 103-6, at 11 (1993). Indeed, Congress specifically rejected allowing individual states to require documentary proof of citizenship from motor-voter registrants. The conference committee considering the NVRA decided that granting states discretion to require documentary proof of citizenship with respect to the modes of registration provided under the

NVRA was "not necessary or consistent with the purposes of this Act." H.R. Conf. Rep. No. 103-66, at 23 (1993). The committee also stated that allowing documentary proof-of-citizenship requirements "could effectively eliminate, or seriously interfere with, the mail registration program of the Act . . . [and] adversely affect the administration of the other registration programs as well." *Id.*

36. The motor-voter provisions of the NVRA have a Kansas state statutory analogue, codified at Kan. Stat. Ann. § 25-2352. The NVRA's provision prescribing that the citizenship status of motor-voter registrants be verified through a sworn attestation has a Kansas state statutory analogue, codified at Kan. Stat. Ann. § 25-2352(b)(1).

ii. Section 8 of the NVRA: List Maintenance

37. Section 8 of the NVRA contains various provisions concerning the maintenance of voter registration rolls. With respect to "[c]onfirmation of voter registration," Section 8 provides that "[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office . . . shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965." 52 U.S.C. § 20507(b)(1).

38. With respect to removing registrants from the list of voters, Section 8 provides "that the name of a registrant may not be removed from the official list of eligible voters except" under limited circumstances set forth by the statute, including: "(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity;" and through a general program that makes a reasonable effort to remove ineligible voters by reason of "(A) death of the registrant; or (B) a change in the residence of the registrant." 52

U.S.C. § 20507(a)(3)–(4). Section 8 does not authorize the removal of qualified voters due to failure to provide documentary proof of citizenship.

iii. Section 10 of the NVRA: Responsibilities of Chief State Election Official

39. Section 10 of the NVRA requires that "[e]ach State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under [the NVRA]." 52 U.S.C. § 20509.

40. In Kansas, the Secretary of State is the chief State election official and bears responsibility for coordination of the State's responsibilities under the NVRA. Kansas statutes vest authority with the Secretary of State and Deputy Assistant Secretaries of State to register voters on a statewide basis, Kan. Stat. Ann. § 25-2323, and authorize the Secretary of State to adopt rules and regulations necessary for the administration of the registration of voters as a part of the driver's license application process, Kan. Stat. Ann. § 25-2352(g).

B. Kansas's Documentary Proof-of-Citizenship Law

41. Despite the clear prohibitions of the NVRA, Kansas has adopted and continues to enforce its DPOC law in a manner that deems motor-voter registrants as not registered to vote unless they submit documentary proof of citizenship to an elections official. Moreover, the DPOC law is enforced in such a manner that even some motor-voter registrants who present documentary proof of citizenship at the time of applying for a driver's license are still not treated as registered until they submit documentary proof of citizenship a *second* time.

i. Legislative History of Kansas's Documentary Proof of Citizenship Law

42. Shortly after taking office, Defendant Secretary Kobach held a press conference on January 18, 2011, to announce plans for the "Secure and Fair Elections (SAFE) Act."[3] Among other things, the bill contained provisions that would become the DPOC law. It was formally introduced in the Kansas Legislature as House Bill No. 2067 (hereinafter "HB 2067"), on January 24, 2011.

43. During legislative deliberations over the SAFE Act, Defendant Secretary Kobach's office released a report in February 2011 that showed sixteen alleged instances of noncitizens registering to vote, and five alleged cases of noncitizen voting between 1997 and 2010.[4] Upon information and belief, none of these allegations of noncitizen registration or voting resulted in a criminal prosecution, let alone a finding by a court of unlawful activity. There is no indication as to whether any of these incidents even led to the cancellation of an improper voter registration.

44. While the Kansas House passed HB 2067 to take effect in 2012, the Senate Ethics and Elections Committee amended the bill to push back the effective date of the documentary proof-of-citizenship requirement by one year, to January 1, 2013. *See* Kan. Stat. Ann. § 25-2309(u). The Senate did so specifically to provide time for the Division of Vehicles (the "DMV") to upgrade the technological systems in its offices, to enable them to copy citizenship

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[3] *See* Press Release, Kris W. Kobach, Secretary of State, *Kansas House of Representatives Passes the SAFE Act* (Feb. 24, 2011), http://www.kssos.org/other/news_releases/PR_2011/House_Votes_on_HB2067.pdf.

[4] Office of the Kansas Secretary of State, *Known Reported Incidents of Election Crimes, 1997 – 2010* (Feb. 9, 2011), http://www.aclu.org/files/votingrights/kselection_crimes_reporting.pdf. Defendant Secretary Kobach has cited to this report at this website in his own published work. *See* Kris W. Kobach, "Why Opponents Are Destined to Lose the Debate on Photo ID and Proof of Citizenship Laws: Simply Put—People Want Secure and Fair Elections," 62 *Syracuse L. Rev.* 1, 5 n.27 (2012).

documents submitted in connection with a driver's license application, and to transmit those copies to elections officials for driver's license applicants who seek to register to vote. As the *Kansas City Star* reported:

> Sen. Kelly Kultala, D-Kansas City, said she proposed the amendment [pushing back the proof-of-citizenship requirement to 2013] to give the Department of Motor Vehicles time to implement its plan to begin collecting and imaging license applicants' citizenship documents — before the agency has to start sharing that information with voter registration.[5]

45. In voting against the proof-of-citizenship bill, Sen. Roger Reitz (R-Manhattan) said, "I don't think there is voter fraud in the State of Kansas" and cited his belief that the bill would decrease voter turnout and make voting too difficult.[6]

46. After the amendment process, HB 2067 gained final passage in the Kansas Senate on March 23, 2011, and in the House on March 29, 2011.[7] Governor Sam Brownback signed the bill into law on April 18, 2011.[8]

ii. The Requirements of the Documentary Proof-of-Citizenship Law

47. The DPOC law is codified at Kan. Stat. Ann. § 25-2309(*l*). The DPOC law took effect on January 1, 2013, Kan. Stat. Ann. § 25-2309(u), and applies only to those who apply to register to vote in Kansas for the first time after that date, Kan. Stat. Ann. § 25-2309(n).

48. Under the DPOC law, a person applying to register to vote must provide documentary proof of citizenship either when filing a registration form in person, or by

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[5] Dion Lefler, *Senate Panel Weakens, But Passes, Kobach Voter ID Plan*, Kan. City Star (Mar. 17, 2011), http://www.kansascity.com/news/local/article298056/Senate-panel-weakens-but-passes-Kobach-voter-ID-plan.html.

[6] *Id.*

[7] Kan. Legislature, *HB 2067*, http://www.kslegislature.org/li_2012/b2011_12/measures/hb2067/.

[8] *See id.*

submitting a photocopy of proof of citizenship along with a completed registration application in the mail. Kan. Stat. Ann. § 25-2309(*l*).[9]

49. The only forms of documentary proof of citizenship that are acceptable under the DPOC law are:

1) a driver's license or nondriver's license issued by the Kansas DMV or by another state if the license indicates that the person has proven their citizenship;
2) a birth certificate;
3) a United States valid or expired passport;
4) United States naturalization documents;[10]
5) documents provided by the United States government pursuant to the Immigration and Nationality Act of 1952 that show U.S. citizenship;
6) a Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number;
7) a consular report of birth abroad of an American citizen;
8) a certificate of citizenship issued by U.S. Citizenship and Immigration Services;
9) certification of report of birth by the United States Department of State;
10) an American Indian Card, with KIC classification, issued by the United States Department of Homeland Security;
11) a final adoption decree showing applicant's name and U.S. birthplace;
12) a military service record showing U.S. birthplace; or
13) a U.S. hospital record showing the person to have been born in the United States.

Kan. Stat. Ann. § 25-2309(*l*). The DPOC law does not allow voter registration in other states to fulfill the proof-of-citizenship requirement. Kan. Stat. Ann. § 25-2309(o).

[9] An applicant, however, may also submit documentary proof of citizenship at a different time from the registration form, so long as it meets all other requirements of the law and the registration form is submitted by the registration deadline. Kan. Stat. Ann. § 25-2309(t). In that case, an applicant must submit documentary proof of citizenship to the county election office by mail or in person by close of business on the day before a scheduled election, or by "electronic means" (email, fax, or website) by midnight the day before the election. Kan. Admin. Regs. § 7-23-14(b). If the voter provides this information in time, the election official must add the voter to the rolls for election day. However, if poll books have already been printed, and the county election official fails to communicate the new registrant's name to the polling place, the voter will only be allowed to cast a provisional ballot. Kan. Admin. Regs. § 7-23-14(b)(3).

[10] If only the naturalization number is provided, the person will not be registered until the county election officer or the Secretary of State verifies the number with the U.S. Bureau of Citizenship and Immigration Services. Kan. Stat. Ann. § 25-2309(*l*)(4).

V. KANSAS'S ONGOING VIOLATIONS OF THE NVRA

A. Enforcement of the Documentary Proof-of-Citizenship Law With Respect to Motor-Voter Registrants

50. Notwithstanding the federal statutes and proceedings described above, Kansas continues to require documentary proof of citizenship from most voter registration applicants, including motor-voter registrants. Upon information and belief, tens of thousands of Kansans have been prevented from registering to vote as a result.

51. Within months of the effective date of the DPOC law, reports surfaced that well over 10,000 Kansas voter registration applications were being held in suspense – meaning that their voter registration forms had been deemed incomplete – due to purported failure to prove citizenship.[11] Upon information and belief, approximately 87 percent of these individuals had tried to register to vote at driver's license facilities.[12]

52. Defendant Secretary Kobach was unconcerned about this state of affairs; when asked about the thousands of voters on the suspense list during the summer of 2013, Defendant Secretary Kobach stated in the media, "I don't think it's a major problem."[13]

53. According to media reports, Kansas election officials initially stated that many of the people on the suspense list filled out registration forms at a driver's license office but did not have the papers to prove their citizenship.[14] This appears to be inaccurate, because a first-time driver's license applicant in Kansas is required to submit proof of legal presence in order to

[11] *See* Cooper, *Would-be Voters*, *supra* note 1.

[12] *Id.*

[13] Brent D. Wistrom, *12,000 Kansas Voters Still in Limbo Over Proof of Citizenship*, Kan. City Star (July 16, 2013), http://www.kansascity.com/news/local/article323173/12000-Kansas-voters-still-in-limbo-over-proof-of-citizenship.html.

[14] *See* John Hanna, *Kansas Proof-Of-Citizenship Law Blocks Many From Voting*, Huffington Post (Aug. 15, 2013), http://www.huffingtonpost.com/2013/08/15/kansas-citizenship-voting_n_3760601.html.

obtain a license, and any of the documents that a U.S. citizen can use to establish legal presence for purposes of obtaining a driver's license are also sufficient to establish U.S. citizenship for purpose of the DPOC law.[15] The documents that a U.S. citizen can use to satisfy the proof of "lawful status" requirement for purposes of obtaining a driver's license are:

- a Certified U.S. Birth Certificate;
- an unexpired U.S. Passport or Passport Card;
- a U.S. Consular Report of Birth Abroad;
- a Certificate of Naturalization; or
- a Certificate of Citizenship.[16]

Each of these documents constitutes acceptable proof of citizenship for purposes of voter registration under the DPOC law. *See* Kan. Stat. Ann. § 25-2309(*l*).

54. Thus, any U.S. citizen who applies for a Kansas driver's license for the first time may only obtain a license by submitting documents that are also sufficient for purposes of establishing citizenship under the DPOC law. And yet, it appears that thousands of citizens who were first-time driver's license applicants are on the suspense list. This includes Plaintiffs Stricker and Boynton, who were first-time driver's license applicants under Kansas law when they registered to vote. Plaintiffs Stricker, Boynton, and Hutchinson all showed documentary proof of citizenship at the time that they registered to vote in conjunction with a driver's license application. Plaintiff Hutchinson returned to the DMV after renewing his driver's license to produce documentary proof of citizenship and was advised that his voter registration was complete. And yet, all three still ended up on the suspense list.

[15] Documentary proof of legal presence is just one of the safeguards in place in the driver's license application process in Kansas. A Kansas resident applying for the first time for a driver's license must, *inter alia*, submit a range of documents, including: (i) acceptable proof of identity; (ii) acceptable proof of lawful status; (iii) acceptable proof of residence; and (iv) a Social Security number. *See* Kan. Department of Revenue, *Driver's License Proof of Identity*, http://ksrevenue.org/dmvproof.html.

[16] *Id.*; *see also* Kan. Stat. Ann § 8-240(b)(1)–(b)(3).

55. Like many other first-time driver's license applicants, Plaintiffs Stricker, Boynton, and Hutchinson are victims of bureaucratic inertia. Beginning in 2009, the Division of Vehicles embarked on a three-year, $40 million DMV modernization project that was supposed to have enabled DMV offices to scan and store electronic copies of documents such as birth certificates and passports, and then transfer copies of those documents to election officials as needed.[17] This process is not working effectively, as copies of the citizenship documents of many first-time driver's license applicants have not been transferred to the appropriate elections offices. Defendants have attempted, on an *ad hoc* basis, to verify whether certain voters on the suspense list may have provided citizenship documents in the course of applying for a driver's license.[18] But rather than correct these problems systematically to assist all affected voters, Defendants have simply left many voters who have complied with all federal *and state* requirements unregistered, and have refused to register these voters unless the voters themselves provide documentary proof of citizenship a second time, directly to an elections official.

56. This situation is not an accident, but rather a product of design: the Kansas state statute implementing the NVRA expressly purports to authorize the State to request such duplicative information. *See* Kan. Stat. Ann. § 25-2352(b)(1) (stating that the voter registration portion of a Kansas driver's license application "[m]ay require . . . information that duplicates, or is in addition to, information in the driver's license or nondriver's identification card section of

[17] *One-third of Kansas Voter Registration Applications Held Up*, Kan. City Star (June 25, 2013), http://www.kansascity.com/news/local/article321959/One-third-of-Kansas-voter-registration-applications-held-up.html.

[18] In some cases, Defendants' *ad hoc* efforts to verify an applicant's citizenship status appear to have been initiated by the State in direct response to an individual suing Secretary Kobach over the invalidity of his voter registration practices. *See* Samantha Lachman, *Want to Get Out of 'Voter Purgatory' in Kansas? Try Suing*, Huffington Post (Nov. 23, 2015), http://www.huffingtonpost.com/entry/kansas-voter-registration_us_56536600e4b0258edb326a06.

the application . . . to enable Kansas election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.").

57. Kansas law and Defendants' practices with respect to duplicative information are directly contrary to the NVRA's prohibition against requiring "any information that duplicates information required in the driver's license portion of the form." 52 U.S.C. § 20504(c)(2).

58. In addition to first-time driver's license applicants, many eligible Kansans who applied to register to vote while renewing their driver's licenses have ended up on the suspense list. In or around September 2013, the Department of Revenue, of which the Division of Vehicles is a part, announced a policy under which all individuals applying to renew a driver's license would be exempted from any requirement of showing documentary proof of legal presence in order to obtain a renewed license. Thus, since that time, the State no longer requires documentary proof of legal presence for driver's license renewals.[19]

59. Most Kansans who renew their driver's licenses do not show documentary proof of citizenship while applying to renew their licenses, and many of them have *never* shown documentary proof of citizenship to the State. Plaintiffs Fish, Ortiz, and Bucci applied to register to vote when they applied to renew their driver's licenses and were not required to show proof of citizenship at that time. They ended up on the suspense list for failure to provide documentary proof of citizenship.

60. As of December 11, 2015, more than 35,000 voters have at some point been placed on the suspense list due to the documentary proof-of-citizenship requirement. This

[19] *See* John Hanna, *Kansas Won't Require Proof of Legal Residency for Driver's License Renewals*," Kan. City Star (Sept. 16, 2013), http://www.kansascity.com/news/local/article327552/Kansas-won%E2%80%99t-require-proof-of-legal-residency-for-driver%E2%80%99s-license-renewals.html.

number constitutes more than 14% of those who tried to register to vote since the DPOC law went into effect in January 2013.

61. The individuals on the suspense list are not a random cross-section of voters in Kansas. They are disproportionately young and unaffiliated. As of December 11, 2015, voters between the ages of 18 and 29 make up approximately 15% of all registered voters in Kansas, but more than 44% of voters on the suspense list due to purported failure to provide documentary proof of citizenship. And unaffiliated voters, who are approximately 31% of registered voters in Kansas, comprise more than 53% of voters on the suspense list due to purported failure to provide documentary proof of citizenship.

B. The 90-Day Purge Rule

62. The number of voters on the suspense list, which had become a growing source of embarrassment for the State, has shrunk dramatically since September 2015. This is due in part to the fact that the State removed large numbers of registrants from the suspense list altogether and canceled their registrations pursuant to a new administrative rule.

63. On June 25, 2015, Defendant Secretary Kobach proposed an administrative rule that would become Kan. Admin. Regs. § 7-23-15. This rule provided that, if an applicant fails to provide "satisfactory evidence of United States citizenship" within 90 days of receipt of the incomplete application, then the "application shall be deemed insufficient . . . and the voter registration application [shall be] canceled."

64. The 90-day purge rule went into effect on October 2, 2015. *Id.* Upon information and belief, more than 12,000 individuals who were on the suspense list due to purported failure to submit documentary proof of citizenship have now been purged from the voter registration system, including Individual Plaintiffs Ortiz, Bucci, Stricker, and Boynton.

65. On November 20, 2015, Individual Plaintiffs Fish, Ortiz, Bucci, Stricker, and Boynton, through their counsel, sent a letter to Defendant Secretary of State Kobach notifying him of the legal violations described in this Complaint. The letter advised Defendant Secretary Kobach that the Individual Plaintiffs were prepared to initiate litigation if these violations were not remedied within 90 days of the date of the letter. A copy of this notice letter is annexed hereto as Exhibit A. On December 17, 2015, the Kansas League, through its counsel, sent a similar letter to Defendant Secretary of State Kobach notifying him of the same legal violations. A copy of the second notice letter is annexed hereto as Exhibit B. More than ninety days have passed, and Defendant Kobach has not responded to either letter, much less corrected the violations.

66. As of December 22, 2015, there were more than 14,000 voters on the suspense list due to purported failure to provide documentary proof of citizenship. This pool of voters remains disproportionately young (more than 44%) and unaffiliated (more than 53%).

VI. DEFENDANTS SELECTIVELY REGISTER VOTERS BORN WITHIN THE STATE OF KANSAS.

67. In the wake of the confusion and embarrassment caused by the large numbers of Kansans on the suspense list, Defendant Secretary Kobach has taken steps to verify independently the citizenship of a fraction of suspended voters. But Defendant Secretary Kobach has done so on a discriminatory basis, limiting efforts to verify citizenship primarily to registrants born in Kansas.

68. Approximately 29% of registrants who were suspended as of September 30, 2015 have come off the Suspense List and are now listed as registered active or inactive voters by the Kansas Secretary of State's Office. Most registrants transferred to active or inactive status by the Secretary of State's Office have not affirmatively provided documentary proof of citizenship.

Rather, Defendant Secretary Kobach has independently registered many individuals on the suspense list by checking their records against Kansas birth certificates on file with the Kansas Department of Health and Environment ("KDHE") without any affirmative contact from the individual suspended voters. Since 2014, Defendant Secretary Kobach has worked in combination with KDHE to check birth records against the ever-growing list of suspended Kansas registrants.[20] Defendant Secretary Kobach provides information from individual voter registration applications, including name, gender, date of birth, and the last four digits of the person's social security number, to KDHE, which then cross-references the information to see if there is a matching Kansas birth certificate on file that could be used to confirm the voter's citizenship.[21] On certain occasions, Kansas marriage license records are also checked to try to identify individuals who have married and changed their names.

69. While such actions may represent an attempt to mitigate the DPOC law's sweeping adverse impact on voters, Defendant Secretary Kobach has applied these efforts in a manner that discriminates against citizens born or married outside of Kansas. The Secretary of State does not generally coordinate with vital records agencies located in other States in order to verify citizenship. Therefore, citizens born and/or married in other States do not typically receive the benefit of Defendant Secretary Kobach's affirmative services to verify citizenship because neither KDHE nor Defendant Secretary Kobach accesses out-of-state birth or marriage records. The Secretary of State's independent actions to verify citizenship discriminate against

[20] *See* Dion Lefler, *Kobach: Birth-records scan helps 7,700 Kansas voters meet citizenship requirement*, Kan. City Star (Jan. 22, 2014), http://www.kansascity.com/news/local/article337082/Kobach-Birth-records-scan-helps-7700-Kansas-voters-meet-citizenship-requirement.html; *see also* Andy Marso, *Kobach: 1/3 of suspended voters OK'd*, Topeka Capital-Journal (Jan. 22, 2014), http://cjonline.com/news/2014-01-22/kobach-13-suspended-voters-okd.

[21] *See Editorial: Double standard*, Lawrence-Journal World (Jan. 24, 2016), http://www2.ljworld.com/news/2016/jan/24/editorial-double-standard/.

Kansas residents born or married outside the State of Kansas. Such discrimination against those who have moved into Kansas from out of state violates the right to travel protected by the Fourteenth Amendment of the Constitution and recognized by the Supreme Court in *Saenz v. Roe*, 526 U.S. 489, 500 (1999) and related cases.

VII. THE ABSENCE OF JUSTIFICATION FOR THE DOCUMENTARY PROOF-OF-CITIZENSHIP LAW

70. There is no evidence of a substantial problem of noncitizen registration or voting in the State of Kansas. In 2011, at the time that the DPOC law was being considered in the legislature, Defendant Secretary Kobach's office issued a report asserting that there was a total of sixteen potential noncitizen voter registrations and five votes allegedly cast by noncitizens in the fourteen-year period from 1997 through 2010; none of those resulted in a criminal prosecution, much less a finding by a court of unlawful activity. There are approximately 1.7 million registered voters in Kansas.[22] Taking the total number of alleged cases of noncitizen registration or voting reported by the Secretary of State in 2011 at face value, the percentage of illegal, noncitizen registrations would account for 0.0009 percent of the total number of registered voters in Kansas. By contrast, approximately 22,000 individuals are on suspense or have been purged altogether from the voter registration system for purported failure to provide documentary proof of citizenship.

71. In a letter dated November 17, 2015, Bryan Caskey, the Election Director in Defendant Kobach's office, sent a request to the federal Election Assistance Commission (EAC) to change the instructions to the federal voter registration form to include a documentary proof-

[22] *See* Julie Bosman, *Voter ID Battle Shifts to Kansas*, N.Y. Times (Oct. 15, 2015), http://www.nytimes.com/2015/10/16/us/politics/kansas-voter-id-law-sets-off-a-new-battle-over-registration.html?_r=0.

of-citizenship requirement.[23] Mr. Caskey claimed that such a requirement was necessary to prevent noncitizens from registering to vote, and alleged that three noncitizens have registered to vote at motor vehicle offices in Sedgwick County: one in 2003 and two in 2010. None of these alleged noncitizen registrations has resulted in a criminal prosecution, or an actual finding by a court of unlawful activity.[24]

72. In 2015, the Kansas Legislature passed and the governor signed into law SB 34, a bill granting the Secretary of State criminal prosecutorial authority in elections-related cases. *See* Kan. Stat. Ann. § 25-2435(a)(3) ("Independent authority to prosecute any person who has committed any act that constitutes a Kansas elections crime . . . shall be vested in . . . the Kansas secretary of state."). Kansas is the only state in the United States that has extended this kind of prosecutorial authority to the Secretary of State.[25] As of February 2016, Secretary Kobach has

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[23] Letter from Bryan Caskey to Brian Newby (Nov. 17, 2015), http://www.eac.gov/assets/1/Documents/Newby%20Ltr%2011-19-2015.pdf.

[24] On February 1, 2016, Brian Newby, the current Executive Director of the EAC and a former Elections Commissioner of Johnson County (who was appointed to that role by Secretary Kobach), abruptly and unilaterally changed the instructions to the federal voter registration form for Kansas to incorporate a documentary proof-of-citizenship requirement. In a published statement, EAC Commissioner Tom Hicks noted that this "unilateral[]" move by Mr. Newby exceeds his delegated authority, violates federal administrative procedural requirements for "a notice and public comment period," and arbitrarily reverses prior EAC determinations without any basis. Statement by Vice-Chair Tom Hicks (Feb. 2, 2016), http://www.eac.gov/assets/1/Documents/Statement%20by%20Commissioner%20Hicks%20NVRA%20Form%20(2-2-16)-1.pdf. *See also Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183, 1198 (10th Cir. 2014) (holding that changing the federal form to incorporate a documentary proof-of-citizenship requirement "would have risked arbitrariness, because Kobach and [Arizona Secretary of State] Bennett offered little evidence that was not already offered in Arizona's 2005 request, which the EAC rejected."). Mr. Newby's unilateral and unlawful actions are currently the subject of separate litigation and a motion for a preliminary injunction in the U.S. District Court for the District of Columbia. *See* Mot. for TRO & Prelim. Inj., *League of Women Voters v. Newby*, No. 1:16-cv-00236 (D.D.C. Feb. 17, 2016), ECF No. 11.

[25] *See* John Hanna, *Kansas Unusual in Giving Kris Kobach Power to Prosecute*, Topeka Capital-Journal (Oct. 18, 2015), http://cjonline.com/news/2015-10-18/kansas-unusual-giving-kris-kobach-power-prosecute.

used this authority to bring a total of six criminal prosecutions, none of which is for noncitizen registration or voting.[26]

73. Finally, even if there were a problem of noncitizen registration or voting in Kansas, the DPOC law is entirely unnecessary to ferret out such illicit registrations. Kansas has ample other methods for verifying the citizenship status of voter registration applicants. These methods include (1) criminal prosecution in cases of perjury about citizenship status; (2) coordination with driver's license bureaus; (3) comparison of responses from jury selection; (4) the Systematic Alien Verification for Entitlements ("SAVE") database (a database listing citizenship status compiled by the United States Citizenship and Immigration Services agency); and (5) verifying birth data via the Electronic Verification of Vital Events system promulgated by the National Association for Public Health Statistics and Information Systems.

VIII. JURISDICTION AND VENUE

74. This action is brought pursuant to the NVRA's private right of action, 52 U.S.C. § 20510, and 42 U.S.C. § 1983.

75. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States, and pursuant to 52 U.S.C. § 20510, which provides for jurisdiction of actions brought under the NVRA.

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[26] *See* Bryan Lowry, *Kobach's Voter Prosecutions Draw Scrutiny to Proof-of-Citizenship Requirement*, Wichita Eagle (Oct. 18, 2015) (concerning the first three prosecutions announced), http://www.kansas.com/news/politics-government/article39670275.html; Jonathan Shorman, *Kris Kobach Files New Round of Voter Fraud Cases in 3 Kansas Counties, Proposes Election Auditing*, Topeka Capital-Journal (Jan. 25, 2016), http://cjonline.com/news/2016-01-25/kris-kobach-files-new-round-voter-fraud-cases-3-kansas-counties-proposes-election#gsc.tab=0. These prosecutions are against individuals alleged to have voted in multiple jurisdictions in the same election cycle; none involve noncitizen registration or voting. One of the cases has resulted in a guilty plea; the individual will pay a $500 fine and court costs. Edward M. Eveld, *Former Olathe Man Pleads Guilty in Unlawful-Voting Case*, Kan. City Star (Dec. 2, 2015), http://www.kansascity.com/news/government-politics/article47634575.html.

76. This Court has personal jurisdiction over the Defendant because he does business in, and is an elected officer of, the State of Kansas.

77. Venue is proper in this district pursuant to 52 U.S.C. § 20510 because the violations took place in this district and the Defendants reside in this district.

CAUSES OF ACTION

COUNT 1: Violations of Sections 5 of the NVRA – Simultaneous Registration for Voter Registration and Application for Motor Vehicle Driver's License

78. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

79. Section 5 of the NVRA requires that every application for a driver's license, including license renewals, must serve as a "[s]imultaneous" application to register to vote in federal elections. 52 U.S.C. § 20504(a)(1). The voter registration form associated with driver's license applications "may not require any information that duplicates information required in the driver's license portion of the form" other than a signature, and "may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant." 52 U.S.C. § 20504(c)(2). The NVRA specifies that the form must include "a statement that . . . states each eligibility requirement (including citizenship)" and "contains an attestation that the applicant meets each such requirement . . . under penalty of perjury." 52 U.S.C. § 20504(c)(2)(C).

80. Because Kansas's DPOC law, Kan. Stat. Ann. § 25-2309(*l*), requires more than the minimum amount of information necessary to assess the eligibility of a motor-voter applicant (*i.e.*, the sworn attestation of eligibility as provided under the NVRA), requires information that duplicates information in a Kansas driver's license application, and instructs state election

officials not to register Plaintiffs and all those similarly situated who fail to provide documentary proof of citizenship, the DPOC law conflicts with the NVRA. The NVRA preempts Kansas's law and prohibits Kansas from requiring that motor-voter registrants – including Plaintiffs and all similarly situated voters – submit documentary proof of citizenship for purposes of registering to vote, absent a showing by the State that such a requirement is necessary to assess the eligibility of motor-voter applicants.

COUNT 2: Violations of Section 8 of the NVRA –
Duty to Ensure Registration of Eligible Applicants

81. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

82. Section 8 of the NVRA requires that "each State shall . . . ensure that any eligible applicant is registered to vote in an election" if, while registering in conjunction with a driver's license application, "the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority" within the specified timeframe. 52 U.S.C. § 20507(a)(1)(A).

83. Defendants fail to "ensure" that Plaintiffs and all others who completed and submitted a "valid voter registration form" in conjunction with a driver's license application "[are] registered to vote" in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(a)(1)(A).

COUNT 3: Violations of Section 8 of the NVRA –
Voter Registration List Maintenance

84. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

85. Section 8 of the NVRA provides an exclusive list of reasons for removing registrants from voter rolls:

- the registrant requests it;
- if State law provides that criminal convictions or mental incapacity makes a registrant ineligible; or
- under a general program where a state makes reasonable efforts to remove ineligible voters for reason of:
  - death of the registrant; or
  - change in residence of registrant.

52 U.S.C. § 20507(a)(3)–(4). Section 8 is the exclusive means of removing registrants and does not permit registrants to be removed for purported failure to provide documentary proof of citizenship.

86. Kan. Admin. Regs. § 7-23-15 unlawfully requires the purging of voter registrants for purported failure to provide documentary proof of citizenship. Kan. Admin. Regs. § 7-23-15 permits that such voters may be removed without compliance with the notice requirements set forth under Section 8 of the NVRA.

87. Motor-voter registrants who, apart from compliance with the DPOC law, submit a completed and valid voter registration form – including Plaintiffs and all those similarly situated – are lawfully registered voters under the NVRA, regardless of whether they provided documentary proof of citizenship or whether such proof was transmitted to an elections official. Because the 90-day rule in Kan. Admin. Regs. § 7-23-15 removes such voters from the voter registration rolls without complying with the list maintenance requirements under Section 8, it violates the NVRA.

COUNT 4: Violations of Section 10 of the NVRA –
Duty to Coordinate State's Compliance with the NVRA

88. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

89. Defendant Kobach is the chief election officer of the State of Kansas, and is "responsible for coordination of State responsibilities" under the statute. 52 U.S.C. § 20509.

90. In light of the various violations described, Defendant Secretary Kobach has violated and continues to violate Section 10 of the NVRA by failing to coordinate the State of Kansas's responsibilities under the statute.

COUNT 5: Violations of Elections Clause, U.S. Const. Art. I, § 4, cl. 1 – Federal Preemption (42 U.S.C. § 1983)

91. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

92. The Elections Clause of the U.S. Constitution mandates that federal law preempts state law in any area where Congress has taken action to "make or alter" the "Times, Places and Manner of holding Elections" for federal office. U.S. Const. Art. I, § 4, cl. 1.

93. Kansas's DPOC law, Kan. Stat. Ann. § 25-2309(*l*), conflicts with the text, purpose, and intent of the NVRA by requiring motor-voter registrants to produce documentary proof of citizenship in order to register to vote.

94. The NVRA 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). The NVRA's federal mandate on the manner of verifying citizenship eligibility preempts conflicting requirements imposed under Kansas law.

COUNT 6: Violations of Privileges and Immunities Clauses, U.S. Const. Art. IV, § 2; Fourteenth Amendment – Right to Travel (42 U.S.C. § 1983)

95. Plaintiffs re-allege and incorporate all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

96. The Privileges and Immunities Clauses in Article IV and the Fourteenth Amendment to the U.S. Constitution protect a fundamental to travel. In *Saenz v. Roe*, the

Supreme Court recognized that "for those travelers who elect to become permanent residents" of another state, the right to travel encompasses "the right to be treated like other Citizens in that State." 526 U.S. at 500.

97. Defendants' discriminatory application of the DPOC law violates the right to travel protected under the Privileges and Immunities Clauses of the Constitution. When a Kansas registrant purportedly fails to provide documentary proof of citizenship, Defendants take affirmative steps to register voters born in Kansas by checking birth and marriage records retained by the KDHE. Defendants do not typically verify suspended registrants' citizenship with agencies outside of Kansas. Citizens who have moved to Kansas and become permanent residents are therefore not treated equally to citizens born or married in the State in violation of the Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter judgment in their favor on their Complaint in its entirety and against Defendants;

B. Declare the DPOC law and 90-day purge rule invalid with respect to motor-voter registrants and preempted by the NVRA;

C. Order Defendants, pursuant to the NVRA, to register to vote the Plaintiffs and all other similarly situated motor-voter registrants who, apart from compliance with the DPOC law, submitted a completed and valid voter registration form, and to restore any such registrants who have been purged pursuant to the 90-day purge rule;

D. Enjoin Defendants from enforcing the DPOC law and the 90-day purge rule with respect to motor-voter registrants who have validly registered to vote in accordance with

Section 5 of the NVRA, regardless of whether they have submitted documentary proof of citizenship;

E. Order Defendants to verify documentary proof of citizenship on file with agencies outside of Kansas in the same manner as they work with KDHE to confirm the citizenship of suspended voters.

F. Award Plaintiffs attorneys' fees and costs pursuant to 52 U.S.C. § 20510 and 42 U.S.C. § 1983; and

G. Award any other relief the Court deems proper.

DESIGNATION OF PLACE OF TRIAL

Pursuant to D. Kan. Rule 40.2, plaintiffs designate Kansas City as the place for trial.

DATED this 17th day of March, 2016.

Respectfully submitted,

/s/ Stephen Douglas Bonney
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CERTIFICATE OF SERVICE

I certify that, on March 17, 2016, the foregoing document was served on counsel for all parties via the Court's ECF system.

/s/ Stephen Douglas Bonney
STEPHEN DOUGLAS BONNEY (#12322)

Attorney for Fish Plaintiffs

EXHIBIT A

November 20, 2015

By Facsimile (785) 291-3051 and U.S. Mail

The Honorable Kris Kobach
Kansas Secretary of State
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612-1594

Re: National Voter Registration Act Non-Compliance

Dear Secretary Kobach,

We represent Ralph Ortiz, Wayne Fish, Donna Bucci, Tad Stricker, and T.J. Boyton. We write on behalf of our clients and all similarly situated persons – *i.e.*, all eligible Kansans who sought to register to vote while submitting a motor vehicle driver's license application (including any renewal application), but who were not registered due to their purported failure to provide extrinsic documentary proof of citizenship – to notify you that Kansas is in violation of the National Voter Registration Act of 1993 (the "NVRA") and to demand that you promptly take corrective action to remedy these violations.[1]

Specifically, Kansas's requirement that individuals who register to vote while applying for or renewing a driver's license also submit documentary proof of citizenship violates Section 5 of the NVRA.[2] Eligible individuals who register to vote while applying for or renewing a driver's license must be registered unless the applicant fails to sign the voter registration application, regardless of any state requirements concerning documentary proof of citizenship. Moreover, Kansas's purge of such voters pursuant to a recently-adopted administrative rule[3] violates Section 8 of the NVRA,[4] which prohibits the removal of duly-registered voters from the rolls except under certain limited circumstances not present here.

[1] 52 U.S.C. § 20501, *et seq.*

[2] 52 U.S.C. § 20504.

[3] *See* K.A.R. § 7-23-15.

[4] *See* 52 U.S.C. § 20507.

These violations are significant and ongoing. The NVRA includes a private right of action in the event that a state fails to correct its noncompliance after its chief election official has received due notice. We urge you as Kansas's Secretary of State to take immediate steps to bring the state into compliance with federal law.

Overview of the NVRA

Section 5 of the NVRA, the well-known "motor-voter" provision of the law, requires that all individuals who apply for or renew a driver's license be provided with an opportunity to register to vote. Section 5 requires that:

> Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.[5]

As you are well-aware, the NVRA compels the states to register for federal elections all individuals who validly apply for voter registration in this manner, and prohibits states from seeking to impose any additional requirements on such applicants. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013); *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183 (10th Cir. 2014).

In addition, Section 8 of the NVRA provides that, once a duly-registered voter is added to the rolls, she may not be removed except under a few limited circumstances: at the request of the registrant; by reason of criminal conviction or mental incapacity, as provided by State law; or pursuant to a general program of voter list maintenance that makes a reasonable effort to remove voters who become ineligible due to death or a change in residence, subject to certain procedural requirements.[6]

[5] 52 U.S.C. § 20504(a)(1).

[6] *See* 52 U.S.C. § 20507(a)(3).

Kansas's Documentary Proof of Citizenship Law for Voter Registration

As you are aware, as of January 1, 2013, Kansas law generally purports to require that voter registration applicants provide documentary proof of citizenship.[7] This requirement has had a detrimental effect on voter registration in the state. As of September this year, approximately 37,000 Kansans trying to register to vote were on a "suspense list" and had not been registered despite the requirements of federal law that you do so, and therefore are unable to vote;[8] of that total, nearly 90% were on the suspense list due to the documentary proof of citizenship requirement.[9] This constitutes about 16% of all registrants since Kansas's documentary proof of citizenship requirement went into effect.[10] These voters are disproportionately young and unaffiliated.[11]

Many of the individuals on the suspense list, including the individuals named in this letter, attempted to register to vote while applying for or renewing their driver's licenses.[12] As explained below, they are duly-registered voters under federal law. Nevertheless, your office has recently promulgated an administrative rule, K.A.R. § 7-23-15, pursuant to which individuals on the suspense list for more than 90 days will be purged from the rolls.[13] The rule went into effect on October 2, 2015.

These practices violate the NVRA in several respects.

First, the NVRA does not require that individuals applying for or renewing a driver's license provide documentary proof of citizenship in order to register to vote. The statute clearly provides that:

---

[7] *See* K.S.A. § 25-2309(*l*).

[8] *See* Associated Press, "Report: Kansas voter list purge affects young, unaffiliated most," *Topeka Capital-Journal*, Sept. 28, 2015, *available at* http://cjonline.com/news/2015-09-28/report-kansas-voter-list-purge-affects-young-unaffiliated-most.

[9] *See* Peter Hancock, "Kobach seeks to purge 'suspense' voter list," *Lawrence Journal-World*, Aug. 8, 2015, *available at* http://www2.ljworld.com/news/2015/aug/08/kobach-seeks-purge-suspense-voter-list/.

[10] *See* Kelsey Ryan and Bryan Lowry, "Young voters, Wichitans top Kansas' suspended voter list," *Wichita Eagle*, Sept. 26, 2015, *available at* http://www.kansas.com/news/politics-government/article36705666.html.

[11] *See* Associated Press, *supra* note 8.

[12] Deb Gruver, "More than 21,000 Kansans' voter registrations in suspense because of proof of citizenship," *The Wichita Eagle*, Oct. 31, 2014, *available at* http://www.kansas.com/news/politics-government/article3504228.html#storylink=cpy.

[13] *See* Peter Hancock, "Douglas County clerk announces plan for handling suspense voter list," *Lawrence Journal-World*, Oct. 1, 2015, *available at* http://www2.ljworld.com/news/2015/oct/01/douglas-county-clerk-announces-plan-handling-suspe/.

> The voter registration application portion of an application for a State motor vehicle driver's license . . . shall include a statement that--
>
> (i) states each eligibility requirement (including citizenship);
> (ii) contains an attestation that the applicant meets each such requirement; and
> (iii) requires the signature of the applicant, under penalty of perjury.[14]

The voter registration application portion of an application for a State motor vehicle driver's license "may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process."[15] Any additional documentary proof of citizenship requirement imposed by state law clearly exceeds "the minimum amount of information necessary" to "enable State election officials to assess the eligibility" of such applicants, and is therefore precluded by the NVRA.[16]

In other words, Kansas's practice of requiring voter registration applicants at motor vehicle agencies to submit documentary proof of citizenship is clearly prohibited by federal law. All eligible individuals who have conducted DMV-related transactions covered by the NVRA and who have applied to register to vote must be registered immediately, regardless of whether they have provided documentary proof of citizenship.

Second, because eligible applicants who sought to register to vote while applying for or renewing a driver's license in accordance with the NVRA are lawfully-registered voters regardless of whether or not they have provided documentary proof of citizenship, such voters may not be removed from the voter registration rolls pursuant to K.A.R. § 7-23-15. Given that none of the circumstances permitting the removal of duly-registered voters from the rolls under Section 8 of the NVRA is applicable here, the 90-day deadline set forth in K.A.R. § 7-23-15 cannot be used to purge voters who have lawfully registered through the motor vehicle registration process set forth under the NVRA.

Third, in light of the violations described above, your office is in violation of its responsibility to coordinate the state's responsibilities under the NVRA.[17]

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[14] 52 U.S.C. § 20504(c)(2)(C).

[15] 52 U.S.C. § 20504(c)(2)(B).

[16] *Cf. Inter Tribal Council*, 133 S. Ct. at 2257, 2259 (holding that the NVRA "precludes [a state] from requiring a Federal Form applicant to submit information beyond that required by the form itself," and that "a state-imposed requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA's mandate that States accept and use the Federal Form.").

[17] *See* 52 U.S.C. § 20509.

The Experiences of Individual Voters

Several individual voters have described efforts to register to vote while applying for or renewing a driver's license at a Kansas DMV in accordance with Section 5 of the NVRA, only to have been stymied by the state's improper application of its documentary proof of citizenship law to these voters. These individuals are just a few of the tens of thousands of voters who have been trapped in limbo as a result of Kansas's proof of citizenship requirement:

- Ralph Ortiz. Mr. Ortiz is an Air Force veteran who, after being stationed in Kansas for several years, left the service and decided to stay in Kansas. In 2014, he went to the DMV to renew his license, and registered to vote at that time. He subsequently received his new license, but his voter registration was placed in "suspense," thus prohibiting him from voting.

- Wayne Fish. In summer of 2014, Mr. Fish visited a DMV to renew his driver's license. He decided to register that day because he wanted to vote in the November 2014 election. After his trip to the DMV, he learned about the proof of citizenship law, and that he wouldn't be able to vote in November without showing a birth certificate first. But Mr. Fish was born on a military base that closed a long time ago (his mother was in the Air Force), and he lacks information on how to obtain a birth certificate from the military now. He ended up not being able to vote in the 2014 election.

- Donna Bucci. In summer of 2013, Ms. Bucci went to renew her license at the DMV and registered to vote. She later received notice that she had not been registered, and that she needed to provide proof of citizenship in order to be removed from the voter registration "suspense" list. She did not attempt to vote in the midterm because she had received notice that she had not been registered to vote due to the documentary proof of citizenship requirement, and paying the more than $20 fee that that state in which she was born charges for a birth certificate would be a significant burden for her.

- Tad Stricker. In approximately October of 2014, Mr. Stricker visited a DMV to obtain a Kansas driver's license (he had recently moved to Kansas for work). He asked to register to vote at that time. He received his license shortly thereafter, and assumed he had also been registered to vote. When he went to a polling place for the November 2014 election, however, he was told that he was not on the rolls, and that he would have to cast a provisional ballot. That ballot was not counted.

It is particularly troubling that one of these individuals was a first-time applicant for a Kansas driver's license, who must have shown proof of legal presence at the time that he applied.[18] There can be no valid justification for requiring such voters – who have already shown proof of citizenship documents to the state in order to obtain their driver's licenses – to do so a second time in order to be registered to vote.

[18] Initial applications for driver's licenses in Kansas require an applicant to show proof of legal presence in order to obtain a driver's license. *See* Kansas Department of Revenue, *Driver's License Proof of Identity*, *available at* http://www.ksrevenue.org/dmvproof.html.

Conclusion

Voters who have complied with the requirements to register to vote at a DMV as set forth under Section 5 of the NVRA must be registered immediately and permitted to vote in the next elections; and any such individuals who were placed on the suspense list for purported failure to provide documentary proof of citizenship may not be purged from the rolls.

We understand that you have previously been made aware of these violations through ongoing litigation in federal court, which was initiated on September 30, 2015.[19] We also understand that you have refused to cure these violations, and instead have taken the position that the NVRA does not prohibit Kansas's practice of requiring voter registration applicants at motor vehicle agencies to submit documentary proof of citizenship, and that voters who register at DMVs but fail to provide proof of citizenship may be purged from the rolls after 90 days, pursuant to K.A.R. § 7-23-15.[20]

Nevertheless, we are willing to work cooperatively with you to assist with developing a plan that will quickly bring the state into compliance with the requirements of the NVRA. We look forward to receiving your response to this letter, including a timeline and plan for achieving and sustaining compliance with the NVRA in Kansas. Moving forward, we hope you will ensure that, consistent with Kansas's obligations under federal law, all Kansas citizens have an opportunity to register to vote without having to navigate unnecessary bureaucratic hurdles.

If, however, you fail to take steps to remedy the state's violations of the NVRA within 90 days, we are prepared to initiate litigation. In that regard, please be advised that this letter serves as notice of violations of the NVRA.[21] We also reserve the right to intervene in the ongoing federal litigation referenced above prior to the expiration of the 90-day notice period.[22]

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[19] *See Cromwell v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan.).

[20] *See* Defs.' Mem. in Opp'n to Pls.' Mot. for Prelim. Inj., *Cromwell v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan.), ECF No. 20, at 8-10.

[21] *See* 52 U.S.C. § 20510(b).

[22] *See Ass'n of Cmty. Orgs. for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997) (holding that the 90-day notice requirement does not apply to parties who intervene in ongoing litigation or where the state makes clear its refusal to comply with the NVRA).

Should you have any questions or concerns, please feel free to contact Dale Ho, Director of the ACLU Voting Rights Project, at (212) 549-2693.

Sincerely,

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neil.steiner@dechert.com

Doug Bonney
Chief Counsel & Legal Director
ACLU Foundation of Kansas
(816) 994-3311
dbonney@aclukansas.org

cc: The Honorable Derek Schmidt,
Kansas Attorney General (by fax & mail)

The Honorable Nick Jordan,
Kansas Secretary of Revenue (by fax & mail)

EXHIBIT B

December 17, 2015

By Facsimile (785) 291-3051 and U.S. Mail

The Honorable Kris Kobach
Kansas Secretary of State
Memorial Hall
1st Floor 120 SW 10th Avenue
Topeka, KS 66612-1594

Re: National Voter Registration Act Non-Compliance

Dear Secretary Kobach,

We represent the League of Women Voters of Kansas ("the League") and write to follow up on a previous letter, dated November 20, 2015. That letter was sent on behalf of our individual clients Ralph Ortiz, Wayne Fish, Donna Bucci, Tad Stricker, and T.J. Boynton, and all similarly situated persons – *i.e.* all eligible Kansans who sought to register to vote while submitting a motor vehicle driver's license application (including any renewal application), but who were not registered due to their purported failure to provide extrinsic documentary proof of citizenship – to notify you that Kansas is in violation of the National Voter Registration Act of 1993 (the "NVRA") and to demand that you promptly take corrective action to remedy these violations.[1] We now reiterate this demand on behalf of the League.

As we explained previously, Kansas's requirement that individuals who register to vote while applying for or renewing a driver's license also submit documentary proof of citizenship violates Section 5 of the NVRA.[2] Eligible individuals who register to vote while applying for or

[1] 52 U.S.C. § 20501, *et seq.*

[2] 52 U.S.C. § 20504.

renewing a driver's license must be registered unless the applicant fails to sign the voter registration application, regardless of any state requirements concerning documentary proof of citizenship. Moreover, Kansas's purge of such voters pursuant to a recently-adopted administrative rule[3] violates Section 8 of the NVRA,[4] which prohibits the removal of duly-registered voters from the rolls except under certain limited circumstances not present here.

These violations are significant and ongoing. The NVRA includes a private right of action in the event that a state fails to correct its noncompliance after its chief election official has received due notice. We again urge you as Kansas's Secretary of State to take immediate steps to bring the state into compliance with federal law. For ease of reference, the violations that we described in our November 20 letter are set forth again below:

Overview of the NVRA

Section 5 of the NVRA, the well-known "motor-voter" provision of the law, requires that all individuals who apply for or renew a driver's license be provided with an opportunity to register to vote. Section 5 requires that:

> [e]ach State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.[5]

As you are well-aware, the NVRA compels the states to register for federal elections all individuals who validly apply for voter registration in this manner, and prohibits states from seeking to impose any additional requirements on such applicants. *See Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013); *Kobach v. United States Election Administration Commission*, 772 F.3d 1183 (10th Cir. 2014).

In addition, Section 8 of the NVRA provides that, once a duly-registered voter is added to the rolls, she may not be removed except under a few limited circumstances: at the request of the registrant; by reason of criminal conviction or mental incapacity, as provided by State law; or pursuant to a general program of voter list maintenance that makes a reasonable effort to remove voters who become ineligible due to death or a change in residence, subject to certain procedural requirements.[6]

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[3] *See* K.A.R. § 7-23-15.

[4] *See* 52 U.S.C. § 20507.

[5] 52 U.S.C. § 20504(a)(1).

[6] *See* 52 U.S.C. § 20507(a)(3).

Kansas's Documentary Proof of Citizenship Law for Voter Registration

As you are aware, as of January 1, 2013, Kansas law generally purports to require that voter registration applicants provide documentary proof of citizenship.[7] This requirement has had a detrimental effect on voter registration in the state. As of September this year, approximately 37,000 Kansans trying to register to vote were on a "suspense list" and had not been registered despite the requirements of federal law that you do so, and therefore are unable to vote;[8] of that total, nearly 90% were on the suspense list due to the documentary proof of citizenship requirement.[9] This constitutes about 16% of all registrants since Kansas's documentary proof of citizenship requirement went into effect.[10] These voters are disproportionately young and unaffiliated.[11]

Many of the individuals on the suspense list, including the individuals named in this letter, attempted to register to vote while applying for or renewing their driver's licenses.[12] As explained below, they are duly-registered voters under federal law. Nevertheless, your office has recently promulgated an administrative rule, K.A.R. § 7-23-15, pursuant to which individuals on the suspense list for more than 90 days will be purged from the rolls. [13] The rule went into effect on October 2, 2015.

These practices violate the NVRA in several respects.

First, the NVRA does not require that individuals applying for or renewing a driver's license provide documentary proof of citizenship in order to register to vote. The statute clearly provides that

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[7] *See* Kan. Stat. Ann. § 25-2309(*l*).

[8] *See* Associated Press, "Report: Kansas voter list purge affects young, unaffiliated most," Topeka Capital-Journal, Sept, 28, 2015, *available at* http://cjonline.com/news/2015-09-28/report-kansas-voter-list-purge-affects-young-unaffiliated-most.

[9] *See* Peter Hancock, "Kobach seeks to purge 'suspense' voter list," *Lawrence Journal-World*, Aug. 8, 2015, *available at* http://www2.ljworld.com/news/2015/aug/08/kobach-seeks-purge-suspense-voter-list/.

[10] *See* Kelsey Ryan and Bryan Lowry, "Young voters, Wichitans top Kansas' suspended voter list," *Wichita Eagle*, Sept, 26, 2015, *available at* http://www.kansas.com/news/politics-government/article36705666.html.

[11] *See* Associated Press, *supra* note 8.

[12] Deb Gruver, "More than 21,000 Kansans' voter registrations in suspense because of proof of citizenship," *The Wichita Eagle*, Oct. 31, 2014, *available at* http://www.kansas.com/news/politics-government/article3504228.html#storylink=cpy.

[13] *See* Peter Hancock, "Douglas County clerk announces plan for handling suspense voter list," *Lawrence Journal-World*, Oct. 1, 2015, *available at* http://www2.ljworld.com/news/2015/oct/01/douglas-county-clerk-announces-plan-handling-suspe/.

> [t]he voter registration application portion of an application for a State motor vehicle driver's license . . . shall include a statement that-
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> (i) states each eligibility requirement (including citizenship);
> (ii) contains an attestation that the applicant meets each such requirement; and
> (iii) requires the signature of the applicant, under penalty of perjury.[14]

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In other words, Kansas's practice of requiring voter registration applicants at motor vehicle agencies to submit documentary proof of citizenship is clearly prohibited by federal law. All eligible individuals who have conducted DMV-related transactions covered by the NVRA and who have applied to register to vote must be registered immediately, regardless of whether they have provided documentary proof of citizenship.

Second, because eligible applicants who sought to register to vote while applying for or renewing a driver's license in accordance with the NVRA are lawfully-registered voters regardless of whether or not they have provided documentary proof of citizenship, such voters may not be removed from the voter registration rolls pursuant to K.A.R. § 7-23-15. Given that none of the circumstances permitting the removal of duly-registered voters from the rolls under Section 8 of the NVRA is applicable here, the 90-day deadline set forth in K.A.R. § 7-23-15 cannot be used to purge voters who have lawfully registered through the motor vehicle registration process set forth under the NVRA.

Third, in light of the violations described above, your office is in violation of its responsibility to coordinate the state's responsibilities under the NVRA.[17]

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[14] 52 U.S.C. § 20504(c)(2)(C).

[15] 52 U.S.C. § 20504(c)(2)(B).

[16] *Cf. Arizona v. Inter-Tribal Council of Arizona, Inc.*, 133 S.Ct. 2247, 2257, 2259 (2013) (holding that the NVRA "precludes [a state] from requiring a Federal Form applicant to submit information beyond that required by the form itself," and that "a state-imposed requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA's mandate that States accept and use the Federal Form.").

[17] *See* 52 U.S.C. § 20509.

The Experiences of Individual Voters

Several individual voters have described efforts to register to vote while applying for or renewing a driver's license at a Kansas DMV in accordance with Section 5 of the NVRA, only to have been stymied by the state's improper application of its documentary proof of citizenship law to these voters. These individuals are just a few of the tens of thousands of voters who have been trapped in limbo as a result of Kansas's proof of citizenship requirement:

- Ralph Ortiz. Mr. Ortiz is an Air Force veteran who, after being stationed in Kansas for several years, left the service and decided to stay in Kansas. In 2014, he went to the DMV to renew his license, and registered to vote at that time. He subsequently received his new license, but his voter registration was placed in "suspense," thus prohibiting him from voting.

- Wayne Fish. In summer of 2014, Mr. Fish visited a DMV to renew his driver's license. He decided to register that day because he wanted to vote in the November 2014 election. After his trip to the DMV, he learned about the proof of citizenship law, and that he wouldn't be able to vote in November without showing a birth certificate first. But Mr. Fish was born on a military base that closed a long time ago (his mother was in the Air Force), and he lacks information on how to obtain a birth certificate from the military now. He ended up not being able to vote in the 2014 election.

- Donna Bucci. In summer of 2013, Ms. Bucci went to renew her license at the DMV and registered to vote. She later received notice that had not been registered, and that she needed to provide proof of citizenship in order to be removed from the voter registration "suspense" list. She did not attempt to vote in the midterm because she had received notice that she had not been registered to vote due to the documentary proof of citizenship requirement, and paying the more than $20 fee that that state in which she was born charges for a birth certificate would be a significant burden for her.

- Tad Stricker. In approximately October of 2014, Mr. Stricker visited a DMV to obtain a Kansas driver's license (he had recently moved to Kansas for work). He asked to register to vote at that time. He received his license shortly thereafter, and assumed he had also been registered to vote. When he went to a polling place for the November 2014 election, however, he was told that he was not on the rolls, and that he would have to cast a provisional ballot. That ballot was not counted.

It is particularly troubling that one of these individuals was a first-time applicant for a Kansas driver's license, who must have shown proof of legal presence at the time that he applied.[18] There can be no valid justification for requiring such voters – who have already shown proof of citizenship documents to the state in order to obtain their driver's licenses – to do so a second time in order to be registered to vote.

Effect on the League of Women Voters of Kansas

The League of Women Voters of Kansas is a non-partisan, grassroots, volunteer and political organization with nine local Leagues across the state. For 95 years, the League has encouraged the informed and active participation of citizens in government. The first League unit in the nation originated in Wichita, Kansas, and was formed directly out of the Women's Suffrage Movement. The League's mission arises from and rests on the foundation of ensuring and protecting the vote for all citizens, and educating the public to promote an informed vote. Today, the League continues to focus on the needs of underrepresented voters in the voter registration process. As part of the League's mission, volunteer members have proudly registered Kansans to vote.

The documentary proof of citizenship law has damaged the League's ability to perform its mission. In particular, the League's voter registration activities have been hampered, because privacy concerns prohibit League volunteers from copying personal documents of voter registrants. A typical League voter registration effort now produces unknown numbers of incomplete registrations. Moreover, the documentary proof-of-citizenship law has resulted in tens of thousands of citizens being blocked from registering to vote, causing the League to re-direct substantial time and resources away from other activities. Attempting to reach citizens whose registrations have been deemed incomplete due to the documentary proof of citizenship law requires many hours of volunteer labor. These are precious resources that, if the state properly complied with its federal voter legal obligations, could be devoted to registering and educating many more voters.

Conclusion

Voters who have complied with the requirements to register to vote at a DMV as set forth under Section 5 of the NVRA must be registered immediately and permitted to vote in the next elections; and any such individuals who were placed on the suspense list for purported failure to provide documentary proof of citizenship may not be purged from the rolls.

We understand that you have previously been made aware of these violations through ongoing litigation in federal court, which was initiated on September 30, 2015.[19] We also

[18] Initial applications for driver's licenses in Kansas require an applicant to show proof of legal presence in order to obtain a driver's license. *See* Kansas Department of Revenue, *Driver's License Proof of Identity*, *available at* http://www.ksrevenue.org/dmvproof.html.

[19] *See Keener v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan.).

understand that you have refused to cure these violations, and instead have taken the position that the NVRA does not prohibit Kansas's practice of requiring voter registration applicants at motor vehicle agencies to submit documentary proof of citizenship, and that voters who register at DMVs but fail to provide proof of citizenship may be purged from the rolls after 90 days, pursuant to K.A.R. § 7-23-15.[20]

Although we have not yet received a response to our November 20 letter from you, we remain willing to work cooperatively with you to assist with developing a plan that will quickly bring the state into compliance with the requirements of the NVRA. Moving forward, we hope you will ensure that, consistent with Kansas's obligations under federal law, all Kansas citizens have an opportunity to register to vote without having to navigate unnecessary bureaucratic hurdles.

If, however, you fail to remedy the state's violations of the NVRA within 90 days of our November 20 letter, we are prepared to initiate litigation. In that regard, please be advised that this letter serves as notice of violations of the NVRA.[21] We also reserve the right to intervene in the ongoing federal litigation referenced above prior to the expiration of the 90-day notice period.[22]

Should you have any questions or concerns, please feel free to contact Dale Ho, Director of the ACLU Voting Rights Project, at (212) 549-2693.

Sincerely,

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[20] *See* Defs.' Mem. in Opp. to Pls.' Mot. for Preliminary Injunction, *Keener v. Kobach*, No. 2:15-cv-09300-JAR-GLR (D. Kan.), Doc. 20, at 8-10.

[21] *See* 52 U.S.C. § 20510(b).

[22] *See Ass'n of Cmty. Organizations for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997) (holding that the 90-day notice requirement does not apply to parties who intervene in ongoing litigation or where the state makes clear its refusal to comply with the NVRA).

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cc: The Honorable Derek Schmidt,
Kansas Attorney General (by fax & mail)

The Honorable Nick Jordan,
Kansas Secretary of Revenue (by fax & mail)

General Information

Court	United States District Court for the District of Kansas; United States District Court for the District of Kansas
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:16-cv-02105

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