



Testimony in Opposition to Texas House Bill 3474,
Verification of Citizenship of an Applicant for Voter Registration

House Elections Committee

April 24, 2017

Thank you for the opportunity to submit testimony on this important voter registration issue. Project Vote is a nonpartisan, nonprofit organization dedicated to realizing the promise of American democracy so that every eligible citizen can register to vote and cast a ballot that counts. Project Vote has particular expertise on issues related to voter registration, and among our core goals is the protection of voter registration drives. Because this bill would disenfranchise eligible citizens and severely burden voter registration drives, we urge you to defeat this measure and to instead focus on reforms that would expand and promote citizen participation in elections.

HB 3474 would require applicants to provide documentary proof of U.S. citizenship to register to vote. **Requiring documentary proof of citizenship would disenfranchise tens of thousands of eligible Texans.** In the very few other states with documentary proof of citizenship requirements, tens of thousands of applicants in each state have been disenfranchised because of these laws.

- Following enactment of Arizona's Proposition 200 (which included the state's documentary proof of citizenship law), over 31,000 individuals were initially rejected for voter registration in Arizona between January 2005 and September 2007 because of a failure to comply with Proposition 200's requirements.¹ Only about 11,000 of these individuals were subsequently able to register to vote.²
- The Tucson Citizen reported that as of August 2006, Maricopa County had rejected 16% (4,903 of 28,467) of voter registration applications it had received that year, acknowledging that most of the rejected applicants likely were citizens who did not provide the documentation required by Proposition 200.³
- In the litigation regarding Arizona's proof of citizenship requirement which culminated in the Supreme Court case *Arizona v. Inter Tribal Council of Arizona*, Arizona produced no evidence that the remaining 20,000 individuals who were barred by Proposition 200 from registering to vote were non-citizens, as opposed to individuals who, for example, were unable to furnish the requisite documents or were otherwise unreasonably burdened by Proposition 200's documentation requirements.
- Proof of citizenship requirements have also prevented tens of thousands of applicants

¹ Order; Findings of Fact and Conclusions of Law at p. 13, *Gonzalez v. Arizona*, No. 2:06-cv-1268-ROS (D. Ariz. Aug. 20, 2008), ECF No 1041.

² *Id.*

³ <http://tucsoncitizen.com/morgue2/2006/08/17/171969-1-100-pima-voter-applicants-rejected-down/>.

from registering in Kansas since going into effect in 2013.⁴

The impact of these laws stems in part from the fact that many Americans lack the requisite ID to fulfill the requirements. Large percentages of Americans do not have a passport.⁵ Indeed, a recent survey found that as many as 5.7% of U.S. citizens – *i.e.*, 11 million citizens – do not have a passport or birth certificate available.⁶ As shown below, these burdens are not borne equally between different segments of the population.

Further, **the requirement for photo identification in conjunction with the proof of citizenship is an attempted end-run around the litigation regarding SB 14, a law that was found to be intentionally discriminatory, and would be the most onerous citizenship verification law in the country.** Under HB 3474, applicants are exempt from the requirement to show documentary proof of citizenship if 1) they register to vote during an in-person Department of Public Safety (DPS) transaction during which proof of citizenship is shown and transmitted or 2) if the state verifies U.S. citizenship by checking DPS records. This means a voter registration applicant must present citizenship documents if DPS has outdated or inaccurate information on file or if there is no record of citizenship. Those without a driver's license or state identification card will obviously have no record of citizenship. Yet HB 3474 requires proof of citizenship verification by unexpired passport or by providing a birth certificate or citizenship papers along with government-issued *photo* identification. As such, the very applicants who are more likely to have to provide proof of citizenship are those who are the least likely to have the most common forms of acceptable identification. This bill promises to disenfranchise eligible Texans, as it is well known that many eligible voters do not possess photo identification. As you are likely aware, in a challenge to SB 14, the voter identification requirement, the courts have found more than 600,000 already *registered* voters in Texas lacked photo identification.⁷

⁴ <http://www.kansas.com/news/politics-government/article3648946.html>; <http://www.reuters.com/article/us-usa-votingrights-kansas-insight-idUSKCN0YN4AQ>

⁵ For instance, in the United States in 2014, 121,512,341 passports were in circulation and the number of eligible voters was 219,941,000. U.S. Department of State, Passport Statistics, <https://travel.state.gov/content/passports/en/passports/statistics.html>; U.S. Census, Table 1 Reported Voting and Registration, by Sex and Single Years of Age: November 2014 (July 2015), <http://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html>. Therefore, assuming every passport in circulation in 2014 was provided to a citizen of voting age, the number of passports in circulation would only account for 55% of the voting eligible population. In reality, however, the percentage of the voting eligible population with a passport is likely well below 55% because passports are also issued to minors who cannot vote.

⁶ Greenstein et al., *Survey Indicates House Bill Could Deny Voting Rights to Millions of U.S. Citizens* 1 (2006) (“Greenstein”) (finding that 5.7% of citizens do not have a passport or birth certificate available), available at <http://www.cbpp.org/files/9-22-06id.pdf>; see also Brennan Center for Justice, *Citizens Without Proof* 2 (2006), available at http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf (finding that 7% of those surveyed “do not have ready access to U.S. passports, naturalization papers, or birth certificates.”)

⁷ *Veasey v. Perry*, 71 F. Supp. 3d 627, 660 (S.D. Tex. 2014) (Veasey I). The acceptable forms of identification were DPS-issued drivers licenses, personal ID cards, and concealed handgun licenses, as well as military ID cards with photos, citizenship certificate containing a photo, or a U.S. passport.

Proof of citizenship requirements disproportionately disenfranchise and burden people of color and low-income applicants as well as rural citizens, who have less access to proof of citizenship documents than other voters. The below table demonstrates that certain segments of the U.S. population lack a passport or birth certificate in large numbers:⁸

Population Segment	Percent of Segment Surveyed Who Lack a Passport or Birth Certificate	Estimated Number of U.S. Citizens Who Lack a Passport or Birth Certificate
65 or Older	7.4%	2.3 million
Earn Less than \$25,000 per Year	8.1%	3 million
African Americans	8.9%	2 million
Residents of Rural Areas	9.1%	4.5 million

Eligible applicants may have difficulty obtaining such documentation. For example, a replacement Naturalization/Citizenship document requires a staggering \$555.00 fee.⁹ A replacement Texas birth certificate application costs \$22.00, a fee that is not trivial to many young, minority, or low-income citizens. Further, requests for a birth certificate online require a driver's license or state identification number¹⁰ and requests by mail require a copy of photo identification.¹¹ The *Veasey* District Court decision specifically noted the so-called Catch- 22 problem: "a DPS ID was required in order to request a certified copy of a voter's birth certificate and a certified copy of a birth certificate was required to get a DPS ID."¹² Additionally, the prevalent problems regarding the accuracy of birth records of people of color was already raised in the voter ID litigation.¹³

This bill will hobble community-based voter registration drives, which serve as critical intermediaries between states and citizens who are alienated from the political process.

⁸ Greenstein at 1-2. The survey also found that 9.2% of citizens who did not earn a high school diploma also lacked a passport or birth certificate. *Id.* at 1.

⁹ <https://www.uscis.gov/n-565>

¹⁰ <https://txapps.texas.gov/tolapp/ovra/RequestFormBC.htm>

¹¹ Application available at <https://www.dshs.texas.gov/vs/reqproc/Ordering-Birth-Certificates-by-Mail/>

¹² 5th cir affirming *Veasey v. Perry*, 71 F. Supp. 3d 627, 650 (S.D. Tex.2014) (*Veasey I*).

¹³ 5th cir affirming *Veasey v. Perry*, 71 F. Supp. 3d 627, 645 (S.D. Tex.2014) (*Veasey I*).

This bill would significantly hamper voter registration drives because many citizens, especially low-income and racial-minority citizens, either do not have citizenship documents or do not carry citizenship documents like passports and birth certificates with them regularly. And even for those citizens that do have documents with them, at some registration locations (e.g., public transit facilities, such as bus stops), it is not even feasible to have a dependable source of electricity, much less operate a photocopier, making collecting these documents practically impossible.

Reduced voter registration through drives is a known consequence of such impracticalities. For instance, in Maricopa County (Arizona's largest county), registration through voter registration drives plummeted 44% between the years prior to and immediately following Proposition 200.¹⁴ Throughout Arizona, new voter registrations attributable to community drives have remained low – 11% in 2007-2008, 5% in 2009-2010, and 6% in 2011-2012.¹⁵

Similarly, after Kansas's documentary proof of citizenship law went into effect in 2013, the League of Women Voters' local Kansas affiliates' registration activities were limited, hindered, or stopped entirely because citizens the organization sought to assist to register could not produce documentary proof of citizenship or would have great difficulty doing so.¹⁶

The documentary proof of citizenship requirements in HB 3474 would violate federal law. In addition to the bill's likely violation of the nondiscrimination provisions of the Voting Rights Act of 1965, well known to the legislature, the National Voter Registration Act requires that states must "accept and use" the federal voter registration form. The Supreme Court has ruled that this provision preempted a state law requirement that rejected voter registration applications using the Federal Form when unaccompanied by documentary evidence of citizenship.¹⁷ The Court noted that permitting the state to impose additional requirements on the federal form threatened to undermine the Federal Form's very purpose of "increasing the number of eligible citizens who register to vote."¹⁸

This bill would likely cost Texas significant funds in prolonged litigation. Litigation challenging various aspects of the laws in the two states currently enforcing proof of citizenship

¹⁴ Maricopa County Recorder's Information Center, All Voter Registrations By Source Month (1999-2007).

¹⁵ U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2007–2008* 38-41 (Table 2a) (June 30, 2009); U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2009–2010* 43-46 (Table 2b) (June 30, 2011); U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2011–2012* 40-45 (Table 2a) (June 30, 2013).

¹⁶ Comment of the League of Women Voters of the United States, the League of Women Voters of Kansas, and the League of Women Voters of Arizona to the U.S. Election Assistance Commission at 18 (Jan. 3, 2014), available at http://lwv.org/files/Kobach.EACComment_LWV_1-3-1.pdf.

¹⁷ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).

¹⁸ *Id.* at 2256 (quoting 42 U.S.C. § 1973gg(b)).

requirements, Arizona and Kansas, has lasted years. The General Assembly should focus on policies that expand the opportunities for eligible citizens to have a voice, rather than spending time enacting burdensome policies that are likely to become mired in costly litigation.

Thank you for the opportunity to provide this testimony on behalf of Project Vote. Should you wish to contact me regarding this bill, please contact Michelle Kanter Cohen, Election Counsel, at 202-546-4173 ext. 309 or email mkantercohen@projectvote.org.