



# LEAGUE OF WOMEN VOTERS OF TEXAS

## TESTIMONY LEAGUE OF WOMEN VOTERS OF TEXAS HOUSE ELECTIONS

MONDAY, APRIL 24, 2017

I am Cinde Weatherby, testifying as a member and on behalf of the League of Women Voters of Texas in OPPOSITION to HB 3474. We appreciate the opportunity to appear before you today. Thank you for allowing us to share our position on this bill.

As the world's leading democracy, our voting system should be free, fair and accessible to all eligible Texans. We believe it is wrong to block any eligible Texan from voting by creating voter registration system requirements for which some cannot comply.

HB 3474 puts forth requirements that have already been shown to disenfranchise tens of thousands of applicants in the few other states that attempted to implement them. A review of the facts indicates how that happens.

- As many as 5.7% of U.S. citizens (11 million) do not have a passport or birth certificate available. As with most issues, the numbers are proportionately higher for minority, less affluent, older and rural citizens. A chart on page 3 of the attached information shows rural residents as the highest at 9.1%.
- Why don't they have these documents? The cost is prohibitive, as well as the time and effort required. Furthermore, the process can be a dead end. For example, to acquire a birth certificate online requires a state driver license or state ID card – the very thing the certificate they seek is to help them acquire. It is a fruitless loop.
- Many citizens register to vote in registration drives or with help of a Volunteer Deputy Registrar. This bill would make that almost impossible. Citizens do not typically carry citizenship documents with them, and VDRs don't have photocopiers with them. Before the Arizona system was ended, voters registered in registration drives declined 44% following adoption. In Kansas, LWV registration activities were limited, hindered, or stopped entirely.
- In addition to HB 3474's likely violation of the nondiscrimination provisions of the Voting Rights Act of 1965, the National Voter Registration Act requires states to accept and use the federal voter registration form. The Supreme Court has ruled on this matter already in the Arizona case.

In light of the several rulings finding the Texas Voter ID requirements discriminatory, passage of this bill will certainly be immediately litigated. Attached is a review of the litigation details from around the country by Project Vote. It also addresses the legal and practical implications of HB 3474.

Texas citizens grow weary of its state revenues being spent on this type of litigation, rather than attending to other priorities. To date, the state already spent more than \$3.5 million on the Voter ID lawsuit alone – enough to pay for ERIC, the more rigorous state crosscheck voter registration system more than three times over.

In summary, we request that you reject this bill and concentrate the State's efforts on the essential protection of the integrity of our elections, including keeping ineligible people from voting. We ask that you protect the voting rights of those eligible Texans who would be wrongly restricted by this proposal.

**For additional information, please contact: Cinde Weatherby, Voting & Elections Issue Chair,**  
**[cindeweatherby@gmail.com](mailto:cindeweatherby@gmail.com), 512.560.1334.**

The League of Women Voters of Texas (LWV-TX) is a nonpartisan citizens' organization that has fought since 1919 to improve our government and engage all citizens in the decisions that impact their lives. It represents more than 5,000 members and supporters in the 25 Local Leagues throughout Texas.

The League of Women Voters never supports or opposes candidates for office or political parties. The member-driven organization of women and men encourages the informed and active participation of citizens in government and seeks to influence public policy through education and advocacy of positions based on extensive issue study and consensus.





Requested Review of Legal and Practical Implications of HB 3474,  
Related to Verification of Citizenship of an Applicant for Voter Registration

April 24, 2017

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 two other states with currently enforced documentary proof of citizenship requirements,<sup>1</sup> 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.<sup>2</sup> Only about 11,000 of these individuals were subsequently able to register to vote.<sup>3</sup>
- 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.
- 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.<sup>4</sup>
- Proof of citizenship requirements have also prevented tens of thousands of applicants from registering in Kansas since going into effect in 2013.<sup>5</sup>

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.<sup>6</sup> Indeed, a

<sup>1</sup> Only two states, Arizona and Kansas, have implemented documentary proof of citizenship requirements. Due to court decisions, it is only fully enforced for all voter registration applicants in state and local elections.

<sup>2</sup> 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.

<sup>3</sup> *Id.*

<sup>4</sup> <http://tucsoncitizen.com/morgue2/2006/08/17/171969-1-100-pima-voter-applicants-rejected-down/>.

<sup>5</sup> <http://www.kansas.com/news/politics-government/article3648946.html>; <http://www.reuters.com/article/us-usa-votingrights-kansas-insight-idUSKCN0YN4AQ>

<sup>6</sup> 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

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.<sup>7</sup> 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.** HB 3474 requires applicants to prove citizenship with an unexpired passport or by providing a birth certificate or citizenship papers along with government-issued *photo* identification. Because under HB 3474, applicants are exempt from this proof of citizenship requirement 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, the applicants who are subject to the documentary proof of citizenship rule are the applicants who don't have a current, up-to-date DPS file. Perversely, then, the applicants subject to the rule—those without a driver's license or state ID card who have no record of citizenship with DPS—are the least likely to have the ID to satisfy it. As a result, 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.<sup>8</sup> This bill would attempt an end-run round the court decisions regarding SB 14 by stopping those voters from even registering in the first place.

**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:<sup>9</sup>

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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.

<sup>7</sup> 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](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.")

<sup>8</sup> *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.

<sup>9</sup> 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.



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.<sup>10</sup> A replacement Texas birth certificate application costs \$22.00, a fee that is not trivial to many young, minority, or low-income citizens.<sup>11</sup> Further, requests for a birth certificate online require a driver's license or state identification number.<sup>12</sup> The *Veasey* District Court decision in 2014 specifically noted the frequent 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."<sup>13</sup> Additionally, the same court also noted prevalent problems regarding the accuracy of birth records of people of color.<sup>14</sup>

**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.**

This bill would significantly hamper voter registration drives because many citizens, especially low-income and racial-minority citizens who disproportionately rely on such drives, 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.

<sup>10</sup> <https://www.uscis.gov/n-565>

<sup>11</sup> The free birth certificate program is currently limited to requests in order to obtain voter identification. Even if this program were expanded, the additional travel and time required may be prohibitive for some applicants.

<sup>12</sup> <https://txapps.texas.gov/tolapp/ovra/RequestFormBC.htm>

<sup>13</sup> *Veasey v. Perry*, 71 F. Supp. 3d 627, 652 (S.D. Tex.2014) (*Veasey I*), *affirmed in part, reversed in part*, 830 F.3d 216 (5<sup>th</sup> Cir. 2016). Other documentation is accepted for in-person birth certificate replacement transactions; however, this means that additional time and travel is required.

<sup>14</sup> *Id.* at 645.

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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

**The documentary proof of citizenship requirements in HB 3474 appear to 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.<sup>18</sup> 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."<sup>19</sup>

**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 requirements, Arizona and Kansas, has lasted years. The Texas Legislature 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.

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<sup>15</sup> Maricopa County Recorder's Information Center, All Voter Registrations By Source Month (1999-2007).

<sup>16</sup> 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).

<sup>17</sup> 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](http://lwv.org/files/Kobach.EACComment_LWV_1-3-1.pdf).

<sup>18</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).

<sup>19</sup> *Id.* at 2256 (quoting 42 U.S.C. § 1973gg(b) [now 52 U.S.C. § 20501(b)]).



Please contact us if you have any further questions. Michelle Kanter Cohen, Election Counsel, at 202-546-4173 ext. 309 or email [mkantercohen@projectvote.org](mailto:mkantercohen@projectvote.org); Marissa Liebling, Legislative Director, at 202-556-5651 or email [mliebling@projectvote.org](mailto:mliebling@projectvote.org).