

LOUD LIGHT CIVIC ACTION

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Oral Opponent Testimony of HB 2448
For the House Elections Committee

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Chair Proctor, Members of the Committee,

Thank you so much for the opportunity to provide testimony today. My name is Melissa Stiehler, and I serve as Advocacy Director of Loud Light Civic Action, a nonpartisan, nonprofit organization that supports and builds the civic engagement and leadership of young people in Kansas. We represent over 16,000 Kansans, including supporters in every House and Senate district across the state. Loud Light Civic Action's primary goal above all else is to ensure all Kansans can exercise their right to vote in a free and fair election. It is with these values that Loud Light Civic Action opposes HB 2448.

This “Paper’s Please” Policy Has Been Tried Before, With Kobach’s Unconstitutional Documentary Proof Of Citizenship Law (DPOC)

Based on the Chair’s public comments and the fact that this bill is being heard in the elections committee on the same day as a constitutional amendment that would restrict Kansan’s freedom to vote to only be limited to this ID or a passport, this is obviously an attempt to launch DPOC 2.0. There is very little difference between today’s proposed policies and the law struck down as unconstitutional in 2018. Both require voters to present personal, private, unnecessary documents- the DMV is even where most people register to vote. Both require those documents to be completed in order to access the franchise. Both are based on lies and conspiracies. The only difference is where Kobach required those documents as part of the registration process, this bill is proposing that as part of the Voter ID process.

DPOC Has Already Been Found Unconstitutional In Federal Court

DPOC was overturned by a Bush-appointed Federal District Judge, Julie Robinson, during the Fish v Schwab case (formerly Fish v Kobach). The verdict was unanimously upheld upon appeal in 2020. This decision was accepted by the United States Supreme Court when they declined to take the appeal. The legal test for constitutionality as determined by the Supreme Court of the United States consists of first, they must “consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments,” that is to look at the harm it causes voters. Second, they must “must identify and evaluate the precise interests put forward by the State as justifications,” that is to look at why the state thinks this is necessary and that there are no less

burdensome options to achieve the state's interest. Finally, they look at considering the balance between the state's interest and the burden placed on voters, known as the Anderson Burdick balancing test. After over a decade of investigations, Kobach was able to make his case that DPOC was necessary and legal to federal courts, and they found his arguments so unconvincing that they not only overruled DPOC, but they found his misuse of evidence that entirely lacked any credibility so atrocious that they sanctioned him and required him to take remedial law classes.

The Injury Of DPOC: 35,314 Eligible Kansas Citizens Were Denied Their Freedom To Vote

This barrier to vote denied that freedom to 12% of all people who attempted to register while DPOC was in effect. This issue crossed party lines— Republicans made up 22% of disenfranchised voters, Democrats made up 18%, and unaffiliated voters made up almost 58% of disenfranchised voters. Individuals 18-29 were three times more likely to land on the suspended list. Under this law, Kansas finished in the bottom five states in the country for youth voter turnout, which is in large part the problem my organization was founded to solve. Many of those Kansans who were denied the vote the first time have never tried to vote since. With laws like this, the harm lasts for an entire generation.

DPOC Did Not Fulfill The State's Interest In Preventing Noncitizen Voter Fraud

After nearly a decade of investigations by Kobach, between 1999 and 2013, Kobach was given the opportunity to prove his claims in court that there were a substantial number of noncitizens registered to vote and intentionally committing voter fraud. With all the resources available to him as Secretary of State, including the power to investigate and prosecute voter fraud, he was only able to prove that “at most, 67 noncitizens registered or attempted to register in Kansas over the last 19 years,” and that the most obvious evidence for these registrations was overwhelmingly administrative errors by state employees and occasionally confusion from immigrants who have legal status but had not yet gained their citizenship at the point of registration. The court went on to talk about the difference between the political rhetoric on this issue and the actual facts and conclusions based on the evidence that was offered:

Defendant insists that these numbers are just “the tip of the iceberg.” This trial was his opportunity to produce credible evidence of that iceberg, but he failed to do so.” They go on to say, “the Court does not assume as Defendant does that this means there must be additional, substantial cases of noncitizen registration. Instead, the Court draws the more obvious conclusion that there is no iceberg; only an icicle, largely created by confusion and administrative error.

DPOC Did Not Fulfill The State's Interest In Keeping Accurate Voter Rolls

The court also found the evidence lacking in the state claim that DPOC assisted the state in voter roll accuracy. The Court explained, “given the almost 2 million individuals on the Kansas voter rolls, some administrative anomalies are expected. In the case of Kansas, this includes 100 individuals in ELVIS with birth dates in the 1800s, and 400 individuals with birth dates after their date of registration.” They concluded that the 67 voter registration errors that potentially could have been resolved through DPOC did not outweigh the injury of over 35,000 eligible citizens’ disenfranchisement.

DPOC Did Not Fulfill The State's Interest In Maintaining Confidence In Elections

Due to the failure to implement less burdensome measures and to the state’s poor handling of the burdens of DPOC, the court concluded that rather than increase confidence in elections, “the law has acted as a deterrent to registration and voting for substantially more eligible Kansans than it has prevented ineligible voters from registering to vote.” The court expanded on this conclusion,

If Kansans who try to register to vote cannot be sure if they are in fact registered, particularly after they have been led to believe they complied with all registration laws, it erodes confidence in the electoral system. If Kansans receive misinformation from State officials about whether they are registered to vote, it erodes confidence in the electoral system. If eligible Kansans’ votes are not counted despite believing they are registered to vote, it erodes confidence in the electoral system.

Alternatives to DPOC

Out of an abundance of caution, the court looked at whether “nothing less than DPOC is sufficient to meet” Kansas’s NVRA eligibility-assessment and found many, less burdensome alternatives to DPOC—some of which have been implemented by the state since this opinion. These alternatives included:

1. More robust and frequent training of state employees, especially those processing voter registration through the Department of Vehicles
2. Better list matching and investigations including comparing the voter rolls with data compiled through the Department of Vehicles, juror questionnaires, and through the federal SAVE Database.
3. Prosecuting known instances of voter fraud. The court pointed out that, “Defendant already has prosecutorial authority over Kansas election crimes. Yet, since obtaining this authority, and despite claiming to have located 129 instances of noncitizen registration in Kansas, Defendant has filed zero criminal complaints against noncitizens for registering to vote.” Since this ruling, there has only been one prosecution of noncitizen voter fraud in Kansas. In the last five major elections, there has only been one prosecution of voter fraud at all, former Congressman Steve Watkins.

Summary Of Conclusions in Fish v Schwab Leading To Unconstitutional Ruling on DPOC

“Given the evidence in the trial record that before the Court’s preliminary injunction about 12% of all new voter registration applicants were either suspended or canceled, the Court finds that the burden imposed on Kansans by this law outweighs the state’s interest in preventing noncitizen voter fraud, keeping accurate voter rolls, and maintaining confidence in elections. The burden is not just on a “few” voters, but on tens of thousands of voters, many of whom were disenfranchised in 2014.”

It Is Irresponsible And Unamerican To Entertain Unconstitutional Restrictions On Our Freedoms

This deliberate effort to deny our freedom to vote is uncreative and duplicative of the unconstitutional DPOC law the courts already ruled clearly on through years of very expensive litigation to the state. The committee knows that efforts like this have been ruled unconstitutional, as we have previously shared with them the expansive court rulings on this exact topic. Every lawmaker has sworn an oath to their duty to uphold the constitution. Perhaps some of the freedoms guaranteed by the constitution are not ones that are of personal significance or even perhaps ones that fit within personal values. Some may not agree with the first amendment being absolute, and would prefer that some speech be silenced. Some may not agree with the second amendment, and would prefer that firearms not be a protected right. Regardless of personal preference, it is the duty of elected officials to defend the freedoms of our citizens as defined by the constitution. Entertaining unconstitutional policies that have been proven to strip tens of thousands of eligible Kansas citizens their freedom to vote with only the justification of political rhetoric and conspiracy theories is a shameful waste of the time, money, and energy of this legislative body and the people of Kansas.

Conclusion: Loud Light Civic Action opposes HB 2448. We urge the committee to recommit yourselves to the oath of your office and defend our constitutional rights by opposing this legislation.