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Testimony in Opposition to HB 2020

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Senate Committee on Federal and State Affairs
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[*Written Only]*

Chairman Thompson and Members of the Committee:

My name is Rashane Hamby and I am the Director of Policy and Research at the American Civil Liberties Union of Kansas. The ACLU of Kansas is a nonpartisan, non-profit organization with more than 35,000 supporters across Kansas that works to preserve and strengthen the civil rights and liberties of every person in our state. I am here to express my organization's opposition to HB 2020. This bill raises concerns about data privacy, alludes to the unfounded claim that non-citizens, in particular undocumented immigrants, vote in our elections, and lacks a sufficient appeals process.

Data Privacy

This bill does not address how data would be transferred from the Director of Motor Vehicles to the Secretary of State. This brings up serious concerns about the potential for such information to be transferred in a way that risks exposure to outside entities through data breaches which could lead to identity theft. Kansas residents have been exposed to the risk of data and identity theft through unsecure data transfer by Kansas offices in the past. In the case, *Moore v. Schwab* (previously *Moore v. Kobach*) brought by the ACLU of Kansas, lead plaintiff Scott Moore shared a name and birthdate with a different man from Naples, Florida. The Crosscheck program used by the Secretary of State's office "matched" the two men as the same person and the office, at the time led by Kris Kobach, transferred Moore's information to Florida officials via unencrypted emails, leaving Moore vulnerable to identity theft. Moore's personal information was exposed in 2013, but he did not learn about the exposure until 2018 when he received a postcard and a one-year subscription to LifeLock, an identity theft protection company[1]. The case resulted in a settlement between Moore and the Kansas Secretary of State's office. The office agreed not to resume use of the Crosscheck system until all security upgrades recommended by the Department of Homeland Security had been implemented and industry-standard encryption practices were adopted. Participant states agreed to a penalty of expulsion from the program for

[1] https://www.aclukansas.org/en/cases/moore-v-schwab-previously-moore-v-kobach

any negligent, reckless or intentional disclosure of information. Although the circumstances here are different, the bill provides no assurances whatsoever that data privacy precautions will be taken. This is particularly troubling since this bill would cause state agencies to disclose social security numbers of Kansas residents in violation of the Kansas Public Records Act[2]. This legislation fails to address how drivers' information would be securely transferred from the Director of Motor Vehicles to the Secretary of State's Office without exposing drivers' private data and violating the Kansas Public Records Act.

Non-Citizen Voting

The notion that non-citizens vote in Kansas elections is unfounded and patently false. The false narrative that non-citizens vote has been floating around for 100 years[3]. Repeated investigations in Kansas have found zero evidence of non-citizen voting. Indeed, a former Secretary of State was even given prosecutorial powers—something unique to Kansas among all the states—expressly to pursue claims of non-citizen voting, only to find no such crimes to prosecute. HB 2020 plays into conspiracy theories about large numbers of non-citizens voting in Kansas elections, and altering the outcome of those elections. This simply isn't true.

Appeals Process and Proof of Citizenship

HB2020 acknowledges the possibility that errors will be made in its hand-off of data from Motor Vehicles to the Secretary of State. It acknowledges that possibility by establishing an appeals process, one where the onus is on the individual citizen voter to demonstrate their eligibility. However, the appeals process spelled out in the bill is woefully inadequate, especially given that even registering to vote as a non-citizen is a crime. The appeals process established by the bill does not state how a person goes about demonstrating their citizenship, nor which documents are to be accepted as evidence. The bill ignores the fact that its infrequent transfer of data—something that the bill requires to happen periodically, but not daily or automatically—may mean that an individual's citizenship status could change in the period before data is sent to the Secretary of State's office, falsely flagging an individual as a non-citizen. Without a robust appeals process, the bill fails to provide both citizens and documented non-citizens alike with the due process that they are entitled to under the constitution.

Moreover, this construct—whereby citizens could be required to provide proof of citizenship in order to vote—is one that raises significant legal and constitutional questions. Indeed, the State of Kansas has already, in its very recent past, experimented with a flagrantly unconstitutional ""proof of citizenship" requirement, one that was found by federal courts to violate the National Voter Registration Act and that resulted in the payment of significant legal costs by the State. Without explicitly creating a proof of citizenship scheme, the bill nonetheless establishes a set of

[2] https://www.aclukansas.org/en/cases/moore-v-schwab-previously-moore-v-kobach
[3] https://www.npr.org/2024/10/12/nx-s1-5147789/voting-election-2024-noncitizen-fact-check-trump

conditions where such a legally problematic scheme might be the only way to implement the bill's provisions. That raises grave concerns.

Conclusion

In conclusion, HB 2020 raises concerns about data privacy, plays into conspiracy theories about non-citizen voting, has an inadequate appeals process, and creates the potential for the resurrection of illegal documentary proof of citizenship requirements. If the Legislature is truly interested in more robust voter registration data sharing between the Department of Revenue/DMV and the Secretary of State's Office, a preferrable option would be for Kansas to join the other 24 states that have a fully automatic voter registration system. The ACLU of Kansas would welcome a conversation with this committee about crafting an automatic voter registration system that improves turnout by eligible citizens, protects the integrity of Kansas elections, and adheres to the highest data maintenance/privacy standards. For the reasons listed above, I urge you, please vote no on HB 2020.

Thank you,

Rashane Hamby

Director of Policy and Research