

August 25, 2021

By Email to:
Sherrie L. Riebel
Allen County Election Office
coclerk@allencounty.org

Re: Letter Regarding HB2332



Kansas

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aclukansas.org

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Dear Ms. Riebel:

We write concerning recent changes to Kansas's voter registration requirements. The ACLU of Kansas is committed to ensuring that all eligible Kansans are able to effectively cast their ballots in our state's elections, and that Kansas's election officials follow both state and federal law in conducting elections and maintaining electoral rolls. While the last legislative session saw a number of changes to the statutes governing Kansas elections, we write concerning the Legislature's passage of H.B. 2332. More specifically, this law changed voter registration address requirements, and your office's implementation of those provisions has the potential to implicate federal law.

Under H.B. 2332:

The residential address of a registered voter shall correspond to a physical location where the registered voter resides and shall not be a post office box or other address that does not correspond to a physical location that can be occupied and, if not, the person shall not be considered a validly registered voter.

H.B. 2332, 2020-2021 Leg., Reg. Sess., (Kan. 2021).

This language could be interpreted in different ways and, since the bill is new, courts have not reviewed it. But the ACLU of Kansas is concerned that county clerks may implement it in a manner that will disenfranchise particular groups, including those experiencing houselessness, migrant workers, or anyone else that does not maintain a permanent household at a fixed address. Stable housing is not, and should never be, a prerequisite to voting under federal or state law. Whatever their housing status, these individuals maintain the right to vote inherent in both federal law and the Kansas state constitution.

Beyond this broader concern with reading HB 2332 to preclude registration of voters experiencing houselessness, the ACLU of Kansas wishes to make you aware of the potential violations of federal law that would stem from interpreting H.B. 2332 in a way that required purging voters from the rolls due to their current registration address.



In enacting the National Voter Registration Act (NVRA) in 1993, Congress sharply limited the circumstances under which states may remove registered voters from the rolls.

Under the Act, county election officials can only remove registered voters in the following circumstances:

1. At the request of the registrant,
2. As provided by State law, by reason of criminal conviction or mental incapacity, or
3. Through a general program that makes a reasonable effort to remove the names of ineligible voters by reason of (A) the death of the registrant; or (B) a change in the residence of the registrant.

52 U.S.C. § 20507(a)(3)–(4).

These limitations are mandatory. “[T]he NVRA’s procedures for removal must be followed ‘to the letter.’” *Common Cause Indiana v. Lawson*, 937 F.3d 944, 962 (7th Cir. 2019) (citing *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1838 (2018)). Removing registered voters for any reason not enumerated by the NVRA would be unlawful. *Id.* Summarily removing registered voters under H.B. 2332 because the voter had not or could not provide a residential street address that a clerk deemed compliant with HB 2332 would thus plainly violate the National Voter Registration Act. Even if HB 2332’s provisions did somehow implicate “a change of residence” under the NVRA—which it does not—removal would not be permissible “without either (1) receiving a direct communication from the voter that she wishes to be removed or (2) going through the NVRA-prescribed process of (a) notifying the voter, (b) giving her an opportunity to respond, and (c) then waiting two inactive election cycles before removing her.” *League of Women Voters of Ind., Inc. v. Sullivan*, No. 20-2815, --- F.4th ----, 2021 WL 3028816, at *5 (7th Cir. July 19, 2021).

Moreover, Section 8(b) of the NVRA provides that “[a]ny State program or activity to protect the integrity of the electoral process . . . shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b)(1). To avoid running afoul of this requirement, any process to remove individuals from the voter rolls in your county cannot target voters registered at locations where individuals experiencing homelessness may register, including temporary shelters, encampments, or other places that may not meet the requirements of H.B. 2332.



In sum, participation in state and federal elections should not be dependent on wealth or possession of certain property, and nothing in the language of H.B. 2332 should be read to require otherwise.

To avoid potential future litigation, we request your office's assistance in ensuring that all individuals—regardless of their housing status—have the right to participate in Kansas's state and federal elections. To that end, we will be monitoring any actions to remove voters from the voting rolls based on H.B. 2332 in order to ensure compliance with the NVRA. Your office should be sure to enter all voter registrations into ELVIS. We will also be monitoring any denials of new registrants based on narrow interpretations of H.B. 2332 that run afoul of the U.S. or Kansas Constitutions.

Kind regards,

A handwritten signature in black ink that reads "Sharon Brett". The signature is written in a cursive, flowing style.

Sharon Brett, Legal Director

A handwritten signature in black ink that reads "Josh Pierson". The signature is written in a cursive, flowing style.

Josh Pierson, Senior Staff Attorney