

By Mail and Email to:
Secretary Schwab
Kansas Secretary of State
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Re: Election guidance to counties on the meaning of H.B. 2332

Secretary Schwab:

We write to request that your office issue guidance to Kansas election officials about the meaning of recently enacted legislation.

Enclosed is a letter we sent to all 105 Kansas county election officials. As you can see, we are concerned about the enactment and implementation of certain provisions in H.B. 2332. It is important that Kansas election officials do not read this statute, and particularly the new requirements surrounding registration at residential addresses, in such a way to violate state or federal law and disenfranchise already-vulnerable populations.

The enclosed letter details our concerns, but in brief H.B. 2332 contains language which could be misconstrued to require registered voters to provide street addresses when they have none to give.

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).

While courts have yet to interpret this new section, any reading which requires the removal of already-registered voters would run afoul of federal law.

Under the National Voter Registration Act (NVRA), 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),

As we point out in our letter to the counties, 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.* 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).

In addition, the NVRA requires uniformity in any program designed to remove voters from the rolls. 52 U.S.C. § 20507(b)(1). To comply with this requirement, any process to remove individuals from the rolls cannot target locations where individuals experiencing houselessness may register, including temporary shelters, encampments, or other places that may not meet the requirements of H.B. 2332.

In order to comply with these requirements, and to avoid future litigation, we request that your office issue guidance to county election officials that makes clear nothing in H.B. 2332 permits the removal of any registered voter nor authorizes any removal procedure inconsistent with the NVRA.

Thank you for your attention to this issue.

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

CC: Garret Roe, garret.roe@ks.gov