

**2023 HOUSE POLITICAL SUBDIVISIONS**

**HB 1431**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Room JW327B, State Capitol

HB 1431  
1/26/2023

Relating to proof of citizenship.

Chairman Longmuir opened the hearing on HB 1431 at 11:45 A.M. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Klemin, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager

### **Discussion Topics:**

- Proof of citizenship
- Voter ID
- Amendment

Rep Louser: Introduced the bill. No written testimony

Brian Newby, Secretary of State's office: Testimony #17036

### **Additional written testimony:**

Doug Sharbono, Fargo, ND: Testimony #17011

Hearing closed at 12:01 PM.

Delores Shimek, Committee Clerk

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Room JW327B, State Capitol

HB 1431  
1/27/2023

Relating to proof of citizenship.

Chairman Longmuir opened the meeting on HB 1431 at 11:02 AM. Members present: Chairman Longmuir, Vice Chairman Fegley, Rep. Hatlestad, Rep. Heilman, Rep. Holle, Rep. Jonas, Rep. Motschenbacher, Rep. Ostlie, Rep. Rios, Rep. Toman, Rep. Warrey, Rep. Davis, Rep. Hager; Absent: Rep. Klemin

### Discussion Topics:

- Committee action.

Rep. Toman moved a Do Pass;  
Seconded by Rep. Motschenbacher

Representatives	Vote
Representative Donald W. Longmuir	Y
Representative Clayton Fegley	Y
Representative Jayme Davis	Y
Representative LaurieBeth Hager	Y
Representative Patrick Hatlestad	Y
Representative Matt Heilman	Y
Representative Dawson Holle	Y
Representative Jim Jonas	Y
Representative Lawrence R. Klemin	A
Representative Mike Motschenbacher	Y
Representative Mitch Ostlie	Y
Representative Nico Rios	N
Representative Nathan Toman	Y
Representative Jonathan Warrey	Y

Roll Call Vote: 12 Yes 1 No 1 Absent, bill carrier: Rep. Davis

Meeting closed at 11:05 AM.

Delores Shimek, Committee Clerk

**REPORT OF STANDING COMMITTEE**

**HB 1431: Political Subdivisions Committee (Rep. Longmuir, Chairman)** recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1431 was placed on the Eleventh order on the calendar.

**2023 SENATE STATE AND LOCAL GOVERNMENT**

**HB 1431**

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

HB 1431  
3/16/2023

Relating to proof of citizenship.

11:20 AM Chair Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

## Discussion Topics:

- Attorney General opinion
- Mark on driver's license
- Driver's license official proof

Rep Louser, District 5, testified in support with no written testimony.

Michael Howe, Secretary of State, testified in support and brought amendment #25625.

Brad Schafer, ND Dept Transportation, testified neutral. No written testimony.

Kathleen Tweeten, Bismarck, ND, testified opposed #25480.

Cody Schuler, ND American Civil Liberties Union (ACLU), testified neutral. No written testimony.

Barbara Headrick, League of Women Voters of ND, testified via TEAMS opposed #25415.

Michael Carter, Native American Rights Fund, testified via TEAMS opposed #25421.

Fowzia, Adde, Immigrant Development Center, Fargo, ND testified via TEAMS opposed #25026.

## Additional written testimony:

Whitney Oxendahl, Fargo, ND, opposed #24951.

Susan Dingle, Bismarck, ND opposed #25369.

12:03 PM Chair Roers closed the hearing.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

HB 1431  
3/23/2023

Relating to proof of citizenship.

4:04 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

## Discussion Topics:

- Committee action

4:04 PM Brian Nybakken, Sec of State office, answered questions.

4:07 PM Nathan Davis, Commissioner Indian Affairs, answered questions.

4:09 PM Brian Nybakken, provided additional information.

Sen Braunberger moved amendment LC 23.0997.01001. Sen Barta seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	AB
Senator Judy Estenson	Y
Senator Judy Lee	AB

VOTE: YES – 4 NO – 0 Absent – 2 Motion PASSED

Sen Estenson moved a DO PASS as Amended. Sen Barta seconded.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	AB
Senator Judy Estenson	Y
Senator Judy Lee	AB

VOTE: YES – 4 NO – 0 Absent – 2 Motion PASSED

Sen Estenson will carry the bill.

4:15 PM Chair Roers adjourned the meeting.

Committee reconsidered their actions at 4:27 PM on March 23, 2023.

*Pam Dever, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

HB 1431  
3/23/2023

Relating to proof of citizenship.

4:27 PM Chair Roers opened committee work. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

### Discussion Topics:

- Committee action

Chair Roers emailed members an amendment. #27255.

Brian Nybakken, Sec of State Office/ Elections Division, answered questions.

Sen Barta moved to reconsider HB 1431.

Sen Estenson seconded the motion.

Roll call vote.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	AB
Senator Judy Estenson	Y
Senator Judy Lee	AB

ROLL CALL VOTE: YES – 4 NO – 0 Absent – 2 Motion PASSED

Sen Braunberger moved amendment LC 23.0997.01001.

Sen Barta seconded the motion.

Roll call vote.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	AB
Senator Judy Estenson	Y
Senator Judy Lee	AB

ROLL CALL VOTE: YES – 4 NO – 0 Absent – 2 Motion PASSED



Sen Estenson moved a DO PASS as Amended.

Sen Barta seconded the motion.

Roll call vote.

<b>Senators</b>	<b>Vote</b>
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	AB
Senator Judy Estenson	Y
Senator Judy Lee	AB

ROLL CALL VOTE: YES – 4 NO – 0 Absent – 2 Motion PASSED

Sen Estenson will carry the bill.

4:35 PM Chair Roers adjourned the meeting.

*Pam Dever, Committee Clerk*

*DR*  
*171*

*3-23-2023*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

- Page 1, line 1, after "16.1-01-04.1" insert "and subsection 2 of section 16.1-15-08"
- Page 2, line 27, overstrike "either a polling place election board member"
- Page 2, overstrike line 28
- Page 2, line 29, overstrike "the office of"
- Page 2, line 29, after the second "election" insert "via print or electronic means"
- Page 3, line 4, replace "but" with "and the card or license indicates the individual is a noncitizen, but the individual"
- Page 3, line 7, remove "show satisfactory proof of citizenship to either a polling place election"
- Page 3, remove line 8
- Page 3, line 9, replace "an employee of the office of" with "present a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14 that no longer reflects that the individual is a noncitizen, to"
- Page 3, line 10, after "election" insert "via print or electronic means"
- Page 3, line 13, remove "After an individual has submitted satisfactory evidence of citizenship, the proper"
- Page 3, remove line 14
- Page 3, line 15, replace "of citizenship under this subsection may be presented via paper or electronic means" with "This section does not effect any associated consent decree or administrative rules adopted related to a consent decree consented to or enacted before August 1, 2023"
- Page 3, after line 18, insert:

**"SECTION 2. AMENDMENT.** Subsection 2 of section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Each ballot within a sealed envelope set aside for an individual ~~who was unable to provide a valid form of identification when appearing to vote in the election~~ as outlined in subsections 5 and 6 of section 16.1-01-04.1 must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion in or exclusion from the canvass of votes."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1431: State and Local Government Committee (Sen. K. Roers, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1431 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "16.1-01-04.1" insert "and subsection 2 of section 16.1-15-08"

Page 2, line 27, overstrike "either a polling place election board member"

Page 2, overstrike line 28

Page 2, line 29, overstrike "the office of"

Page 2, line 29, after the second "election" insert "via print or electronic means"

Page 3, line 4, replace "but" with "and the card or license indicates the individual is a noncitizen, but the individual"

Page 3, line 7, remove "show satisfactory proof of citizenship to either a polling place election"

Page 3, remove line 8

Page 3, line 9, replace "an employee of the office of" with "present a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14 that no longer reflects that the individual is a noncitizen, to"

Page 3, line 10, after "election" insert "via print or electronic means"

Page 3, line 13, remove "After an individual has submitted satisfactory evidence of citizenship, the proper"

Page 3, remove line 14

Page 3, line 15, replace "of citizenship under this subsection may be presented via paper or electronic means" with "This section does not effect any associated consent decree or administrative rules adopted related to a consent decree consented to or enacted before August 1, 2023"

Page 3, after line 18, insert:

**"SECTION 2. AMENDMENT.** Subsection 2 of section 16.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Each ballot within a sealed envelope set aside for an individual ~~who was unable to provide a valid form of identification when appearing to vote in the election as outlined in subsections 5 and 6 of section 16.1-01-04.1~~ must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion in or exclusion from the canvass of votes."

Renumber accordingly

**TESTIMONY**

**HB 1431**

**Do Pass Testimony  
of Doug Sharbono, citizen of North Dakota  
on HB1431  
in the Sixty-eighth Legislative Assembly of North Dakota**

Dear Chairman Longmuir and members of the House Political Subdivisions Committee,

I am writing as a citizen and believe HB1431 is good legislation.

Please give HB1431 a Do Pass Recommendation.

Thank you,

Doug Sharbono  
1708 9<sup>th</sup> St S  
Fargo, ND 58103

MICHAEL C. HOWE  
SECRETARY OF STATE

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**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
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**HOUSE BILL 1431**  
**JANUARY 26, 2023**

**HOUSE POLITICAL SUBS COMMITTEE**  
**REPRESENTATIVE DONALD LONGMUIR, CHAIRMAN**

**TESTIMONY PRESENTED BY**

**BRIAN NEWBY, SECRETARY OF STATE**

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Chairman Longmuir and members of the committee. I am Brian Newby, and I am the Elections Director for the Office of Secretary of State. I am here today in support of House Bill 1431 which we believe best addresses issues related to the verification that electors are United States citizens.

We have been working collaboratively with the bill's sponsor and the Attorney General's office to develop language that creates a process that is least burdensome to the voter and works to ensure only qualified citizens are allowed to vote in a North Dakota election.

This bill is intended to treat the license issued by the Department of Transportation as the official record of a voter's citizenship status. If a voter comes to vote and the license denotes that the voter is not a U.S. citizen, the voter would be provided a set-aside ballot with the opportunity to cure the ballot by providing proof of citizenship prior to the meeting of the canvassing board 13 days following the election. It allows proof of citizenship to occur either by paper or digital means. The canvassing board would make the final decision regarding all votes cast in this manner. Upon providing valid proof of citizenship, the Central Voter file would be corrected.

Our office does suggest some modifications to section 6 of the bill for clarity and proposes replacement language for Page 3, item 6, attached.

The suggestions clarify that the identification provided by the voter is the item used to assert citizenship and clarifies what is intended as "satisfactory evidence of citizenship." The suggestion also ensures that the cure is conducted with the county election office and approved by the canvassing board, rather than the cure occurring at the polling place.

We also want to clarify, that this bill and language proposed involves voters' proof of citizenship, not the Identification required at the polls or by mail.

Suggested Modification to HB 1431, page 3, item 6:

If an individual presents a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14, **and this card or license reflects that the individual is a non-citizen, but yet the individual** asserts valid citizenship, the individual may mark a ballot that must be set aside securely in a sealed envelope designed by the secretary of state.

After the ballot is set aside, the individual may show satisfactory proof of citizenship, **defined as a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14 that no longer reflects that the individual is a non-citizen, to either a polling place election board member if the individual returns to the polling place before the polls close or** to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion in or exclusion from the tally. After an individual has submitted satisfactory evidence of citizenship, the proper election official shall update this information in the central voter file.

Satisfactory proof of citizenship under this subsection may be presented via paper or electronic means.

**Nothing in this section shall be interpreted as impacting NDCC voter identification laws (16.1-01-04.1. Identification verifying eligibility as an elector.) or procedures related to those laws, associated consent decrees, or administrative rules related to any consent decree.**

**Senate State & Local Government Committee**  
**March 16th, 2023**  
**HB 1431 - Testimony in Opposition**

Chair Roers and members of the Senate State and Local Government Committee, my name is Whitney Oxendahl and I am writing in opposition to HB 1431. The bill would require eligible voters who have received a North Dakota ID before they were citizens - indicated by "permanent resident" printed on the card - to show documentary proof of citizenship for their vote to count in North Dakota elections.

It is my understanding that this bill may be amended to require "permanent resident" ID card holders to get a whole new ID to prove their citizenship instead of presenting documentary proof of citizenship to election officials. Based upon that understanding, an amended HB 1431 would allow those voters to vote a set aside ballot, but for their vote to count, they would have to schedule a DMV appointment, gather all the paperwork needed, go get a new ID, and then bring that ID to the courthouse before the canvassing board meets 13 days later. This is a big ask for new Americans to navigate within that time frame.

Under current law and with the ND Attorney General's 2022 opinion, there is no requirement for these eligible voters to provide documentary proof of citizenship in order to vote or get a new ID to prove their citizenship. In the November 2022 election due to the AG's opinion, the "Not a US citizen" popup on the poll workers' poll pad tablets were disregarded, voters attested verbally that they were US citizens, and they were able to vote a regular ballot.

Here are some of my concerns with implementing House Bill 1431:

- 1) When someone becomes a naturalized US citizen, there has been no one asking these eligible voters to apply for a new North Dakota ID that reflects their citizenship credentials.
- 2) There has been no outreach to the new American community on this issue, either by the NDDOT or the secretary of state's office.
- 3) There are more than 15,000 individuals with "permanent resident" credentials in the NDDOT database, and no one knows how many of these ID card holders have become naturalized citizens.
- 4) In the June 2022 Primary Election, there were voters incorrectly marked as noncitizens on the poll pads when their North Dakota ID was scanned at the polls due to NDDOT database issues. Has the Legislature confirmed these database



issues have been corrected? If this bill passes, will something like what happened in June happen again during a future election?

I fear that passing this bill could place a burden on eligible voters who don't hear about the law change before the 2024 elections. They would head to vote without an updated ID and may be dissuaded from casting a ballot due to the additional steps needed for their vote to count.

**I urge you to consider making this bill a study instead.** Find out how many eligible voters would be impacted by a law change. Direct the executive branch to start reaching out to new American voters in advance and connecting with them at naturalization ceremonies. We don't want our new voters to have a poor experience when they head to the polls for the first time.

I urge the committee to advocate for due diligence on behalf of our eligible voters. Thank you for the opportunity to share my testimony.



Immigrant Development Center  
1345 Main Avenue  
Fargo, ND 58103

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**STATEMENT OF FOWZIA ADDE EXECUTIVE DIRECTOR OF IMMIGRANT  
DEVELOPMENT CENTER  
OPPOSING HOUSE BILL 1431  
MARCH 13, 2023**

Committee Chair and members of committee my name is Fowzia Adde, and I am the Executive Director of Immigrant Development Center. I am sending my testimony in opposition to the proposed House Bill 1431.

As a person committed to ensuring accessible and fair elections, I am firmly opposed to the proposed HB 1431. The bill imposes a significant burden on eligible voters who may lack a driver's license or other acceptable form of citizenship-verifying identification.

This amendment mandates that voters who present a noncitizen identification card or operator's license and assert valid citizenship must set aside their ballot in a sealed envelope and present acceptable proof of citizenship to a polling place election board member or an employee of the office of the election official prior to the meeting of the canvassing board. This requirement creates additional obstacles for eligible voters, especially those who may not have easy access to documents proving their citizenship.

The amendment to HB 1431 unfairly targets certain groups of eligible voters, including those with low incomes, senior citizens, disabilities as well as refugees who have become citizens (new Americans) who may have difficulty obtaining the required documentation to prove their citizenship. This bill would mainly impact new American and immigrant voters, because it is focused on those noncitizen ID cards. Furthermore, this requirement may discourage eligible voters from participating in elections, resulting in a lower voter turnout and a less representative democracy. There are over 15,000 of these "permanent resident" ID cards active.

HB 1431 creates additional logistical difficulties for election officials, who must set aside these ballots and verify proof of citizenship prior to the meeting of the canvassing board. This procedure may result in longer wait times at polling locations, creating additional obstacles for voters.

The proposed HB 1431 imposes unwarranted restrictions on eligible voters, obstructing their participation in the electoral process. As a result, I urge legislators to **vote against** this bill and instead concentrate on efforts to expand voting access for all eligible citizens.

Please make a DO NOT PASS recommendation on HB1431, on proof of citizenship in order to vote. The North Dakota Driver's License, used as proof of ID, if it is a Real ID license already is proof of citizenship and really is all that is needed. North Dakota does not have problems with hordes of noncitizens trying to vote. This bill is not that subtly directed at people who are brown and black and may still speak with a bit of the accent of another tongue to their English, thought they are naturalized citizens. A number of these people own businesses, work in local businesses, are members in good standing of their church, pay taxes, own or rent homes, and are part of a neighborhood or community. The hatred and intolerance and lack of factual information behind this bill are disgusting, embarrassing, and simply wrong. Susan Dingle, taxpayer, citizen, voter



**House Bill 1431**  
**Senate State and Local Government Committee**  
**March 16th, 2023**

Chair Roers and members of the Senate State and Local Government Committee: my name is Barbara Headrick, and I am submitting testimony on behalf of the League of Women Voters of North Dakota in opposition to House Bill 1431. The bill is unnecessary, it's discriminatory, and it opens the state up to litigation.

Currently, any North Dakota resident who is a US citizen and over 18 years old can vote, and there have been no reported issues with noncitizens voting. This bill requiring documentary proof of citizenship in order to vote targets one group: new Americans who have become naturalized US citizens. Requiring something of them and not others is burdensome, discriminatory, and unnecessary.

**#1) This bill is unnecessary.** There have been no cases reported of noncitizens voting in our elections<sup>1</sup> and if a person were to vote illegally, there is already a process in place to prosecute that person. Anyone convicted of voting illegally faces up to five years in jail, a fine of up to \$10,000, and even deportation. Why would a non-citizen vote illegally with such a high price?

North Dakota voters are already required to attest that they are qualified electors before they receive their ballot, either by signing their absentee ballot application or verbally in person at the polls. "Are you a United States citizen?" was added to the list of questions poll workers ask voters after Measure 2 was approved by voters in 2018, which added to the state constitution the requirement of US citizenship to vote in North Dakota elections.

**#2) In purporting to solve a problem - that does not exist in our elections - it does so in a discriminatory way and would result in confusion for voters.** This bill targets new Americans who have become naturalized citizens as the only group having to provide additional proof of citizenship. We fear this will have a chilling effect on voters in diverse communities and keep them away from the polls.

We understand there may be an amendment to the bill to require eligible voters with the "permanent resident" ID card to get a brand new ID for their vote to be counted. There are 15,843<sup>2</sup> valid "permanent resident" credentials on record with the NDDOT, and the NDDOT cannot verify how many of these individuals have become naturalized US citizens. We do know that 1,324 citizens became naturalized in North Dakota in 2021 alone and an average of 769 individuals were naturalized per year from 2017-2021.<sup>3</sup>

Right now, there's nothing in state law that would require the NDDOT or the secretary of state's office to notify these eligible voters to bring satisfactory proof of citizenship or get an updated ID card to vote.

House Bill 1318 would require the NDDOT to contact all of the 15,843 "permanent resident" ID card holders to let them know to get an updated ID if they become a naturalized US citizen. If HB 1318 passes, the law would take effect August 1st, 2023, and the NDDOT would have less than 11 months to communicate to all these individuals - in the various languages spoken by the recipients - before the June 2024 Primary Election.

<sup>1</sup> The Heritage Center Voter Fraud Map. <https://www.heritage.org/voterfraud/search?state=ND>

<sup>2</sup> From the NDDOT on February 17th, 2023

<sup>3</sup> US Department of Homeland Security. <https://www.dhs.gov/profiles-naturalized-citizens-2021-state>

The timeframe to communicate to eligible voters and for them to act on it to get a new ID is nearly impossible. It will cause confusion for voters when they arrive at the polls, and this confusion will not impact all eligible voters, only those in the new American community.

**#3) Finally, this bill would open the state up to litigation.** Numerous state laws that would require documentary proof of citizenship have been struck down in the courts because the requirement places an unreasonable burden upon voters, especially on voters of color. Below are some of those cases:

- In *Fish v. Schwab*, the Tenth Circuit struck down a documentary proof of citizenship law in Kansas because the state could not provide evidence to justify the burden it placed on individuals' right to vote.
- In *Georgia Coalition for People's Agenda, Inc. v. Kemp*, a federal court in Georgia held that a documentary proof of citizenship requirement - imposed only on naturalized citizens based on outdated DMV data - created "a very substantial risk of disenfranchisement," and could not be justified in that case. In that case, Georgia's requirement has mired it in litigation for over four years. Recently, the court denied the State's motion for summary judgment and the case is moving toward trial.
- In *League of Women Voters v. Harrington*, the federal district court in Washington, DC ruled that the implementation of documentary proof of citizenship laws in Alabama, Georgia, and Kansas violated federal law, and prevented them from going into effect.
- In Texas and Florida, laws that used data from drivers licenses to verify voters' citizenship were struck down after thousands of naturalized citizens were incorrectly flagged for removal from the voter rolls.
- And in Arizona, a documentary proof of citizenship law is currently the subject of ongoing litigation.

In every state where laws like this have been introduced, they have faced significant legal challenges, costing millions of dollars to litigate, and threatening to disenfranchise qualified voters. This bill is a costly solution to a problem that does not exist in our elections.

**The League of Women Voters of North Dakota strongly urges committee members to give HB 1431 a Do Not Pass recommendation.** This bill is unnecessary, discriminatory, and would open the state up to costly litigation. Voting is the backbone of our democracy and requiring proof of citizenship to vote only serves to decrease civic participation in our state.

Thank you for your attention. I welcome any questions that you might have.

Testimony submitted by Barbara Headrick, LWVND Board President, [nodaklwv@gmail.com](mailto:nodaklwv@gmail.com)

# Native American Rights Fund

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## NARF Testimony in Opposition to House Bill 1431

March 15, 2023

Chairman Roers and Members of the Senate State and Local Government Committee:

The Native American Rights Fund (NARF) submits this testimony in opposition to House Bill 1431 (HB 1431). HB 1431 lacks clarity, particularly regarding established North Dakota law regarding Native American voting rights, and violates the *Brakebill, v. Jaeger* consent decree. As explained below, if this bill is to move forward, it must explicitly recognize that tribally issued forms of identification will satisfy the proof of citizenship requirement to vote, even if citizenship status is not noted on the tribally issued form of identification.

HB 1431 seeks to create a new proof of citizenship requirement for voters. It requires voters to cast a set aside ballot if they do not present “satisfactory evidence of citizenship” when casting their ballot. HB 1431 does not define “satisfactory evidence of citizenship.” The bill does not explicitly state what proof a voter can show when voting to avoid having their ballot set aside, or what documentation can be provided later to cure a set aside ballot. Such vagueness will create voter confusion and that vagueness is especially problematic considering this Legislature’s knowledge that Native American citizens in North Dakota often lack a state form of identification. Indeed, that tribal members lack state identification was conclusively established over many years at trial and through numerous court opinions issued through the *Brakebill v. Jaeger* and *Spirit Lake v. Jaeger*

litigation. And, if this current Legislature is somehow not aware that tribal members often lack state identification, this testimony conclusively puts the Legislature on notice that Native Americans across North Dakota lack state identification and a requirement of such identification to prove citizenship is unconstitutional.

Current state law already recognizes tribally issued forms of identification as a valid form of voting identification, as well as an ID issued by the Department of Transportation. However, the new citizenship requirement in HB 1431 only references the state issued identification, not tribally issued identification. If HB 1431 is to be interpreted that only a state issued operator's license or nondriver identification card will satisfy the citizenship requirement, that illegally disenfranchises Native Americans who vote with tribally issued identification cards or documents.

Additionally, in 2020, the state entered into a consent decree in federal court to settle multiple cases filed by Tribes and tribal members in the state.<sup>1</sup> A copy of the consent decree is attached to this testimony. The cases challenged a proof of residency to vote requirement previously adopted by the Legislature. That law created a burden on tribal members who often lack residential street addresses on reservations. The consent decree requires the Secretary of State to recognize tribal IDs and tribally issued documentation, and allows tribal members to identify their residency on a map if their ID or documentation lacks a residential address.

We are not aware of tribal IDs issued by Tribes in the state containing a designation showing United States citizenship. As the first inhabitants of this country, imposing such a requirement on Tribes in order for tribal members to vote would be nonsensical and insulting. And importantly, creating new requirements that will not allow tribal members to continue to vote with their tribal IDs and tribal documentation would violate the consent decree and open up the state to legal liability.

In conclusion, we once again reiterate that if this bill is to move forward, it must explicitly recognize that tribally issued forms of identification including IDs and tribally issued documentation will satisfy the proof of citizenship requirement to vote.

Thank you for your consideration.

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<sup>1</sup> *Brakebill, et al. v. Jaeger* (1:16-cv-008); *Spirit Lake Tribe, et al. v. Jaeger* (1:18-cv-222).





enactment of N.D.C.C. § 16.1-01-04,1 and the Secretary's implementation of the statute violated their voting rights and the rights of their members. The Secretary denied the allegations. The cases have been consolidated. In order to avoid prolonged, expensive, and potentially divisive litigation, all of the parties agreed to a compromise settlement and to entry of a Consent Decree. The settlement encompasses all issues save for the pending motion for attorneys fees and costs in the *Brakebill* case which the Court will address in a separate order.

Approval of a consent decree is within the informed discretion of the Court. United States v. Union Elec. Co., 132 F.3d 422, 430 (8th Cir. 1997). That discretion generally should be exercised in favor of the settlement of litigation. Donovan v. Robbins, 752 F.2d 1170, 1177 (7th Cir. 1985). In reviewing a consent decree, the court must determine whether it is fair, adequate, reasonable, and consistent with the goals of the underlying legislation. Union Elec. Co., 132 F.3d at 430; see also United States v. Hercules, Inc., 961 F.2d 796, 800 (8th Cir. 1992); United States v. Metro. St. Louis Sewer District, 952 F.2d 1040, 1044 (8th Cir. 1992). The role of the court is to ensure that the settlement "is not illegal, a product of collusion, or against the public interest." United States v. Colorado, 937 F.2d 505, 509 (10th Cir. 1991).

The Court has carefully reviewed the entire record, the parties' filings, the Consent Decree and the relevant law. The Court finds the Consent Decree is fair, reasonable, and consistent with the law and the public interest. For good cause shown, the motion (Doc. No. 96) is **GRANTED**. It is therefore **ORDERED, ADJUDGED, and DECREED** that the terms of the Consent Decree are approved as set forth herein:

1. As used throughout this document, the term "Tribal Government" shall have the definition established in N.D.A.C. § 72-06-03-01(3) as defined on the date the Consent Decree is entered. The terms "tribal identification" and "supplemental documentation"

shall include the documentation described in N.D.A.C. §§ 72-06-03-02, 72-06-03-04, on the date the Consent Decree is entered. Nothing in the Consent Decree shall preclude the Secretary of State from recognizing additional forms of tribal ID and supplemental documentation pursuant to a) future agreement of the Parties or b) future administrative or legislative enactment.

2. This Court has jurisdiction over these actions pursuant to 28 U.S.C. §§ 1331,1343, 1362,1367, and 52 U.S.C. § 10308(f).
3. Entry of this Consent Decree shall constitute final judgment in the Brakebill and Spirit Lake cases, notwithstanding the pending Plaintiffs' Motion for Attorneys' Fees and Costs in the Brakebill Case (Case No. Doc. 1:16-cv-008, Doc. No. 107). However, after final judgment is entered, the Court will retain jurisdiction over the Global Settlement Agreement and this Consent Decree for the purpose of enforcing both the Settlement Agreement and the Consent Decree. If a dispute arises between the Parties relating to the implementation of the terms of this Consent Decree, the Parties shall confer in good faith in an attempt to resolve the dispute without Court involvement. If the Parties are unable to resolve the dispute through good faith conferral, the dispute may be presented to the Court by motion for resolution by the Court. The dispute resolution process described in this paragraph is intended to enforce the overall implementation of this Consent Decree with respect to voter ID related processes and procedures in North Dakota. The Court only has the jurisdiction to enforce the Consent Decree, not garden-variety election administration errors. It will be up to the Court to make a determination about when complaints constitute a violation of the Consent Decree.

4. The Secretary of State recently promulgated administrative rules, Chapter 72-06- 03 of the North Dakota Administrative Code, entitled Tribal Identification for Voting, which were approved by the Governor on February 4, 2020 for immediate emergency effectiveness (hereinafter “Rules”). Should the Secretary of State seek to amend the Rules, the Secretary of State shall confer in good faith with the tribal councils of the tribes located in North Dakota about such amendments before the amendments are promulgated.
5. Plaintiffs waive any rights they may have to the recovery of attorney's fees and costs from the Secretary of State or from any other North Dakota official or entity in both the Brakebill and Spirit Lake cases, except the amount already sought by motion in the Pending Brakebill Attorney's Fees Claim. The excepted amount is not resolved by the Consent Decree; it remains in dispute and shall be decided by the Court. This waiver is limited to the recovery of fees and costs Plaintiffs would be entitled as prevailing parties in these matters. This waiver does not extend to any future litigation that may arise regarding the enforcement of this Global Settlement and Consent Decree or any future controversy among the parties.
6. The Secretary of State shall recognize tribal IDs and supplemental documentation issued to tribal members and to non-member residents who are qualified electors living within the Tribal Government's jurisdiction.
7. The designation by a Tribal Government of a voter's current residential street address within the Tribal Government's jurisdiction, is valid and conclusive for purposes of voting. The Secretary of State shall also work with county 911 coordinators to encourage the coordinators and the Tribal Governments to assist one another and cooperate to

identify the 911 street addresses for the physical location of residences within the Tribal Government's jurisdiction and share information about any addresses designated by the Tribal Government.

8. The Secretary of State shall ensure that Tribal Governments are provided with county-approved precinct maps for the precincts that include land within the Tribal Government's jurisdiction at least 50 days prior to a statewide election.
9. The Secretary of State shall incorporate the information addressed by this Consent Decree and the Rules, as applicable, into state materials for public education, pollworker training, the absentee ballot application form, and guidance to county auditors, including the election manual.
10. The Secretary of State shall create and distribute sample forms for the Tribal Governments to use as templates for tribal ID or supplemental documentation forms and keep these templates available on the Secretary of State's website. At the request of any Tribal Government, the Secretary of State shall make available, free-of-charge, tribal ID forms and supplemental documentation forms, for use by Tribal Governments.
11. The Secretary of State shall work in good faith with the Indian Affairs Commission and the Department of Transportation ("DOT") to develop and implement a program of distributing free nondriver photo identification cards on all North Dakota reservations within 30 days in advance of statewide elections, arranged in consultation with the Tribal Governments.
12. The Secretary of State shall work in good faith with the Office of Management and Budget and the Governor's Office to identify existing appropriations to reimburse Tribal Governments in North Dakota for the administrative costs of issuing addresses and IDs

for voting purposes for the 2020 election cycle in the amount up to \$5,000 for actual costs incurred per Tribal Government. The Secretary of State will work in good faith with the Plaintiffs to seek an ongoing legislative appropriation to reimburse Tribal Governments for the administrative costs of issuing addresses and IDs for voting purposes in the next legislative assembly for the amount up to \$5,000 for actual costs incurred per Tribal Government for each statewide election cycle.

13. After each statewide election, the Secretary of State shall issue a report containing data regarding set aside ballots and verification of set aside ballots in counties that have tribal reservation land within their boundaries. Except as prohibited by state or federal law or a court order, the county report shall detail the reason each ballot was marked and set-aside, the means by which each set aside ballot was verified, and how many set-aside ballots were counted due to verification and how many set-aside ballots were not counted due to failure to verify. For set aside ballots that were marked set aside because of an insufficient ID, missing or invalid address, or address marked with a map, except as prohibited by state or federal law or a court order, the report will indicate whether the voter was assigned an address (if applicable), whether the voter's address was verified (if applicable), and the methods used to communicate the residential street address to the relevant Tribe and verified voters.
14. The State shall accept as valid for voting purposes, a tribal ID or supplemental document issued by a Tribal Government, that locates a person's residence within a voting precinct by marking it on a map, or by another method agreed upon by the Parties, identifying the location of residence other than a numbered street address. All addresses provided in this manner will be assigned a 911 residential street address by the county 911 coordinator

who shall also be required to communicate that address to the voter. If the location indicated by the voter has already been assigned a residential street address, that address shall be verified and provided to the voter. A ballot marked pursuant to this paragraph will not be discarded solely due to failure to reach the individual and communicate the assigned or verified address. Any set-aside ballot marked pursuant to this paragraph with a verified or assigned address will be counted unless the ballot is invalid for a non-address related issue (e.g., wrong ballot cast).

15. If a voter utilizes the method identified in paragraph 14 on election day, the individual shall be allowed to vote a set aside ballot. If an applicant utilizes the method identified in paragraph 14 on an absentee or mail ballot application, or if an address provided by the applicant is determined to be "invalid," the 911 coordinator will verify or assign an address as required by paragraph 14, and the Secretary shall direct the county auditors to provide supplemental documentation of that address along with the absentee or mail ballot to the applicant. This process shall be completed in a timely manner to ensure that the assignment or verification process does not cause the voter to miss their opportunity to vote. If necessary to determine the correct residential street address, the Secretary of State shall direct county auditors to contact the applicant and, if necessary, the Tribal Government.
16. For purposes of this Consent Decree, a residential street address is "verified" by identifying and providing the correct address for the location of the voter's residence indicated by the voter, where such an address has already been assigned to that location of residence. An address is "assigned" to such a voter when no such address has previously been assigned to that location of residence under the county addressing

system. For purposes of this Consent Decree, "residence" shall be defined by the North Dakota Century Code (see N.D. Cent. Code § 16.1-01-04.2).

17. The Secretary of State, in consultation with county auditors and 911 coordinators in counties containing tribal reservation land, shall develop a system to verify or assign residential street addresses within the time frame permitted for verifying a set aside ballot for voters who vote a set aside ballot pursuant to paragraph 15. Once the residential street address for set aside ballots cast pursuant to paragraph 15 is verified or assigned by the 911 coordinator, the set aside ballot will be counted during the meeting of the county canvassing board.
18. In addition to the procedures outlined for set-aside ballots above, the Secretary of State shall communicate with the Tribal Governments immediately after a statewide election regarding issues that might reasonably be cured by the Tribal Government on behalf of a tribal member or on behalf of a non-member resident who is a qualified elector living within the Tribal Government's jurisdiction. Nothing herein will prevent alterations to the specific procedures outlined in 72-06-03-05 of the North Dakota Administrative Code so long as they comply with this Consent Decree.
19. The Secretary of State and the Plaintiff Tribes shall designate a set number of regularly scheduled meetings between tribal leaders and representatives of the Secretary of State's office, including in advance of statewide election cycles.
20. The Secretary of State and the Plaintiff Tribes shall develop a memorandum of understanding with intent to improve communications and relationships between the Secretary of State and Spirit Lake Nation and Standing Rock Sioux Tribe, respectively.

Any other Tribal Government may request such a memorandum of understanding be implemented between the Tribal Government and the Secretary of State.

21. Nothing contained in this Consent Decree is intended to, nor shall be construed to, violate current state or federal law.
22. The Secretary of State shall pay the full fee of the mediator used by the parties on February 6, 2020.

**IT IS SO ORDERED.**

Dated this 27th day of April, 2020.

/s/ Daniel L. Hovland  
Daniel L. Hovland, District Judge  
United States District Court



## HB 1431

Good morning, madam chair and members of the committee. My name is Kathleen Tweeten, I live in District 8 of Burleigh County, and I oppose HB 1431. Full disclosure, I am the current president of the League of Women Voters of Bismarck Mandan, but I'm not here in that capacity. I am here representing myself as a poll worker. I commend you on your "do not pass" recommendation on SB 2157 and sincerely hope that you will do the same "do not pass" recommendation on HB 1431.

Being a poll worker is not an easy job. You are a volunteer with two hours of training and a 13-to-14-hour and maybe more day of intense responsibility. Plus, you must bring your own coffee and lunch, cannot leave the site and no real breaks. Everyone's dream job! Could be why it's difficult to find poll workers. This bill will make it harder.

Poll workers want this to be a good experience. You can see the excitement and pride but also the nervousness of voters, especially of those who are voting for the first time. It can be confusing, and I believe this bill would just add another layer to the confusion. The confusion will be on both sides, the poll worker may not understand the law and the voter may not understand the new requirements. So together it's not just a mess, but possibly a contentious one. Nobody wants that!

I feel this bill is totally unnecessary and redundant. If there is any question as to the eligibility of a voter, their ballot is set aside after voting, and they have until the canvassing board meets to straighten out any concerns. Personally, I do not and suspect that most poll workers do not want to question the eligibility of the voter. Every elector is asked if they are a US Citizen and when they say yes, who am I to question that!

I would be happy to try to answer any questions that you may have.

Thank you for your respectful attention.

MICHAEL C. HOWE  
SECRETARY OF STATE

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**SENATE STATE & LOCAL GOVERNMENT COMMITTEE**  
**SENATOR KRISTIN ROERS, CHAIRMAN**

**HOUSE BILL 1431**  
**MARCH 16, 2023**

**TESTIMONY PRESENTED BY**

**MICHAEL HOWE, SECRETARY OF STATE**

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Madam Chair, our office stands in support of HB 1431 which comes to you from the North Dakota House with broad bipartisan support after a 90-4 vote on January 30<sup>th</sup>.

I want to stress this bill ensures all voters are treated the same regarding inaccurate information on their identification card. If you go to the polls with an outdated identification card that lists your old North Dakota address and you haven't updated your new address on your ID, you can fill out a set-aside ballot. You have 13 days before the canvassing board meets to provide the accurate address and update your identification card.

If you've become a naturalized United States citizen and your ID still indicates you are a non-citizen, this bill allows you to fill out a set aside ballot and gives you 13 days to update your identification card.

We have been working collaboratively with the bill's sponsor and the Attorney General's office to develop language that creates a process that is least burdensome to the voter and works to ensure only qualified citizens are voting in a North Dakota election. In an October 2022 opinion, North Dakota Attorney General Drew Wrigley said election workers cannot legally ask voters to prove their citizenship status.

This bill is intended to treat the identification card issued by the Department of Transportation as the official record of a voter's citizenship status. Whether you recently moved from Grand Forks to Bismarck and no longer have a correct address or you are a new citizen who hasn't yet updated your identification card, this bill creates a process where you would be allowed to vote using a set-aside ballot.

Our office is bringing forth a proposed amendment to page 3, in section 6 of the bill, for clarity and proposes replacement language. A Christmas tree version is also included for your reference.

The language provided directs the voter to update their identification card with the Department of Transportation and then cure their ballot with the county canvassing officials.

We also want to clarify, that this bill and language proposed involves voters' proof of citizenship, not the identification required at the polls or by mail. This bill supports that your identification card remains the official voter identification method.

I urge you to support the proposed amendment and then give this bill a do pass.

6. If an individual presents a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14, and this card or license reflects that the individual is a non-citizen, but yet the individual asserts valid citizenship, the individual may mark a ballot that must be set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show satisfactory proof of citizenship, defined as a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14 that no longer reflects that the individual is a non-citizen, to either a polling place election board member if the individual returns to the polling place before the polls close or to an employee of the office of the election official responsible for the administration of the election before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion in or exclusion from the tally. After an individual has submitted satisfactory evidence of citizenship, the proper election official shall update this information in the central voter file. Satisfactory proof of citizenship under this subsection may be presented via paper or electronic means. Nothing in this section shall be interpreted as impacting NDCC voter identification laws (16.1-01-04.1. Identification verifying eligibility as an elector.) or procedures related to those laws, associated consent decrees, or administrative rules related to any consent decree.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1431

Page 2, line 27, after "to" overstrike "either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of"

Page 2, line 29, after "administration of the election" insert "via print or electronic means"

Page 3, line 4, after "39-06-14," overstrike "but" and insert "and this card or license reflects that the individual is a non-citizen, yet the individual"

Page 3, line 7, after "citizenship" overstrike "to either a polling place election board member if the individual returns to the polling place before the polls close or" and insert ", defined as a nondriver identification card issued under subsection 2 of section 39-06-03.1 or an operator's license issued under section 39-06-14 that no longer reflects that the individual is a non-citizen,"

Page 3, line 18, after "means" insert "Nothing in this section shall be interpreted as impacting NDCC voter identification laws (16.1-01-04.1. Identification verifying eligibility as an elector.) or procedures related to those laws, associated consent decrees, or administrative rules related to any consent decree."

Page 3, after line 18, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-15-08.2 of the North Dakota Century Code is amended and reenacted as follows:

2. Each ballot within a sealed envelope set aside for an individual as outlined in subsections 5 and 6 of 16.1-01-04.1 ~~who was unable to provide a valid form of identification when appearing to vote in the election~~ must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion in or exclusion from the canvass of votes."

Renumber accordingly

## CHRISTMAS TREE VERSION OF CHANGES – PAGE 3, SECTION 6

5. If an individual is not able to show a valid form of identification but asserts qualifications as an elector in the precinct in which the individual desires to vote, the individual may mark a ballot that must be ~~securely~~ set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may show a valid form of identification to ~~either a polling place election board member if the individual returns to the polling place before the polls close, or to an employee of the office of~~ the election official responsible for the administration of the election via print or electronic means before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion or exclusion from the tally.
6. If an individual presents a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14, and this card or license reflects that the individual is a non-citizen, but yet the individual asserts valid citizenship, the individual may mark a ballot that must be set aside securely in a sealed envelope designed by the secretary of state. After the ballot is set aside, the individual may ~~show satisfactory proof of citizenship, defined as~~ present a nondriver identification card issued under subsection 2 of section 39 - 06 - 03.1 or an operator's license issued under section 39 - 06 - 14 that no longer reflects that the individual is a non-citizen, to either a polling place election board member if the individual returns to the polling place before the polls close or to an employee of the office of the ~~to the~~ election official responsible for the administration of the election via print or electronic means before the meeting of the canvassing board occurring on the thirteenth day after the election. Each ballot set aside under this subsection must be presented to the members of the canvassing board for proper inclusion in or exclusion from the tally. ~~After an individual has submitted satisfactory evidence of citizenship, the proper election official shall update this information in the central voter file. Satisfactory proof of citizenship under this subsection may be presented via paper or electronic means. Nothing in this section shall be interpreted as impacting NDCC voter identification laws (16.1-01-04.1. Identification verifying eligibility as an elector.) or procedures related to those laws, associated consent decrees, or administrative rules related to any consent decree.~~

Page 3, line 18, after the period insert:

**SECTION 1. AMENDMENT.** Section 16.1-15-08.2 of the North Dakota Century Code is amended and reenacted as follows:

2. Each ballot within a sealed envelope set aside for an individual as outlined in subsections 5 and 6 of 16.1-01-04.1 ~~who was unable to provide a valid form of identification when appearing to vote in the election~~ must be delivered to the election official responsible for the administration of the election so the envelope containing the ballot is available if the individual for whom the ballot was set aside appears in the official's office to verify the individual's eligibility as an elector. The verified and unverified ballots set aside must be delivered to the members of the canvassing board for proper inclusion in or exclusion from the canvass of votes.