

## Federal Voter Registration Application to Include Proof of Citizenship

In a suit filed in U.S. District Court in Kansas on August 21, 2013, the Kansas and Arizona secretaries of state asked for a ruling to require the Election Assistance Commission to include the citizenship requirement in the voter instructions accompanying the universal federal voter registration application form, which is prescribed by the EAC.

This lawsuit is in response to the June 17, 2013, ruling by the U.S. Supreme Court in *Arizona v. Inter Tribal Council of Arizona* regarding the ability of states to require that voters provide proof of citizenship when submitting a federal form. The court's ruling indicated that states might file suit if the EAC declined to make the necessary changes to the voter registration form administratively.

There was a hearing in federal court in Wichita on December 13, 2013. The judge ordered the EAC to issue its final ruling by January 17, 2014, regarding the voter instructions on the federal registration form. The EAC issued its ruling on January 17 denying the secretary of states' request. A subsequent hearing was conducted in the Wichita court on February 11, 2014.

The federal court issued its final ruling on March 19, 2014, in favor of Kansas and Arizona. The EAC must immediately add the language requested by the states to the state-specific instructions on the federal form. ■



The federal court in Wichita ruled in favor of the Kansas and Arizona secretaries of state on March 19, 2014.

Photo by Joe Gratz/Creative Commons

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# canvassing kansas

Published by the Office  
of the Secretary of State

## EDITORS

Brad Bryant  
Kay Curtis

## LAYOUT AND DESIGN

Todd Caywood

## CONTRIBUTORS

Brad Bryant  
Bryan Caskey  
Kay Curtis

Suggestions or comments?  
Please call (785) 368-8095.

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Kansas Secretary of State  
Memorial Hall  
120 SW 10th Ave.  
Topeka, KS 66612-1594  
(785) 296-4564



## From the desk of the Secretary

I am happy to report that the state of Kansas recently won a major victory in federal court. On March 19, 2014, U.S. District Judge Eric Melgren ordered the United States Election Assistance Commission (EAC) “to add the language requested by Arizona and Kansas to the state-specific instructions on the federal mail voter registration form effective immediately.” From now on, the federal form will require proof of citizenship, just as our state form does.

Concerning the states’ proof-of-citizenship requirement, the decision says, “Because the Constitution gives the states exclusive authority to set voter qualifications under the Qualifications Clause, and because no clear congressional enactment attempts to preempt this authority, the Court finds that the states’ determination that a mere oath is not sufficient is all the states are required to establish.”

This is a significant victory for the states of Kansas and Arizona. We have successfully protected our sovereign right to set and enforce the qualifications for registering to vote. We have now paved the way for all 50 states to protect their voter rolls and ensure that only U.S. citizens can vote.

It has been a long and difficult road since we brought the lawsuit against the EAC seven months ago. Because of this victory it will not be necessary to distinguish applicants based on which form they turned in, and there will be no need for a federal-elections-only ballot for those very few who used the federal form to register and failed to provide a citizenship document. ■

# Time for Annual Maintenance of Voter Registration Lists

In February 2014, the Office of the Secretary of State provided information to county election officers to assist them in their annual programs to maintain clean, accurate and up-to-date voter registration lists. There are a number of things the SOS and CEOs do to maintain the lists. The current efforts involve the first three of the following list:

- National Change of Address (NCOA)
- Interstate Voter Registration Data Crosscheck
- Social Security Administration (SSA) Death Master File
- Felony Lists from Kansas Department of Corrections
- Deceased Person Lists from Kansas Office of Vital Statistics

NCOA - The National Voter Registration Act of 1993 (NVRA, or “motor-voter”) requires states and counties to conduct systematic list maintenance programs. One option cited in the NVRA is to use the U.S. Post Office’s NCOA list to identify individuals who have moved and to mail confirmation notices to them. Many individuals who are mailed confirmation notices have moved out of the county or state, and such individuals are given an Inactive status, which makes them subject to removal after a period of time.

In lieu of NCOA, counties may opt to conduct countywide mailings to identify, by mail pieces returned by the Postal Service as undeliverable, individuals who have moved. A series of targeted mailings may be done instead of a single countywide mailing if preferred, as long as all voters are included in the program each year.

The SOS office compares the NCOA file to the statewide ELVIS voter registration database and provides the matching records to

CEOs for processing and mailing of confirmation notices.

Interstate Crosscheck - Kansas is the host state for this program, which has grown from 4 states in 2005 to 28 states in 2014. In January 2014, the SOS office compared more than 101 million voter registration records from the participating states and provided the apparent matches to CEOs for processing. The interstate crosscheck is designed to identify duplicate registrations and, in some cases, double votes.

SSA Death Master File - This program, now in its third year, identifies deceased persons who have not previously been discovered by CEOs through their regular review of local obituaries and data provided by the Office of Vital Statistics. SOS instructions require the CEO to verify the apparent matches through at least one separate means, such as an obituary in a newspaper in another jurisdiction, which sometimes may be found through Google searches.

All of this information is provided to CEOs through the secure SOSIX website. The NCOA and interstate crosscheck results were provided in January. As of this writing, processing of the SSA Death Master File had not been completed.

It is important for CEOs to process the information for all of these programs as soon as possible. The NVRA requires completion of all list maintenance programs at least 90 days before any election so voters’ names are not canceled right before the election. The first statewide election this year will be the primary on August 5. ■

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## Howell Reappointed Shawnee County Election Commissioner

Secretary of State Kris Kobach reappointed Andrew Howell as Shawnee County Election Commissioner on January 7, 2014, to a full four-year term. Howell was first appointed to fill the unexpired term of Elizabeth Ensley Deiter when she resigned September 15, 2012, to become a magistrate judge in Nemaha County (See Canvassing Kansas, September 2012, page 8). Ensley Deiter had served as election commissioner since her appointment on January 13, 1992, by then-Secretary of State Bill Graves.

In accepting his reappointment, Howell said “I’ve enjoyed getting to know the excellent staff in our office in Shawnee County as well as the other election commissioners and clerks from across the state.” A former member of the Kansas House of Representatives, he added “I’m hoping to use my experiences as a former legislator to help influence better legislation for clerks and elections officials across Kansas.” ■

# Many Election Bills Considered in 2014 Legislative Session

This is a list of bills being considered in the 2014 legislative session that have impact on state and county election officers in Kansas. Bills that did not pass in 2013 are still alive for consideration in 2014. The following list contains only those bills that have had hearings or received some type of action.

## 2014 Senate Bills

**SB 275** - This is an ethics bill that would prohibit the use of public funds, vehicles, equipment, and supplies of governmental agencies, or the time of government employees, in campaigns advocating the passage or defeat of question submitted elections. Current law already prohibits their use in campaigns advocating the passage or defeat of candidates.

**SB 343** - This bill would require all governmental entities to file with the SOS office annual reports of expenditures made for lobbying in the state legislature.

## 2013 Senate Bills

**SB 63** - Proposed by the secretary of state, this is an election crime bill. It would (a) clarify language in laws defining the crimes of voting more than once, election bribery, voting without being qualified, and false impersonation of a voter, (b) raise the penalties for some election crimes, and (c) grant authority to the secretary of state to prosecute election crimes.

**SB 97** - This bill would authorize the Logan County commissioners to propose a resolution that, if passed by a majority of the voters in a special election, would establish at-large elections for county commissioners.

**SB 98** - This bill would change the limit for the affidavit of exemption for campaign finance in local elections. Current law states that if a candidate for local office spends less than \$500 on his/her campaign, the candidate is exempt from filing campaign finance reports by filing an affidavit of exemption. This bill would raise the threshold to \$1,000. "Local office" means 2nd and 3rd class cities, community colleges, local school districts and township offices.

**SB 100** - This is an ethics bill that would remove the requirement that registered lobbyists who spend less than \$100 in a year file expenditure reports with the SOS on Jan. 10 each year.

**SB 109** - This is an ethics bill that would prohibit the expenditure of public funds for the purpose of lobbying the legislature.

**SB 145** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. It would make spring elections partisan and would move them to the fall of odd-numbered years with a primary in August and general election

in November. This would affect the following jurisdictions: extension districts, cities, boards of public utilities, water districts, drainage districts, irrigation districts, unified school districts, and community colleges.

**SB 156** - This bill would increase the limit on campaign contributions to candidates for state senate from \$1,000 to \$1,500 per primary and general election and leave the limit for state board of education at \$1,000 per primary and general election.

**SB 211** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. It would make spring elections partisan and would move them to the fall of even-numbered years with a primary in August and general election in November. This would affect the following jurisdictions: extension districts, cities, boards of public utilities, water districts, drainage districts, irrigation districts, unified school districts, and community colleges. Also, this bill would (1) do away with candidate rotation and place candidates' names on ballots in alphabetical order, and (2) do away with election in the primary of political party precinct committee positions.

**SCR 1601** and **SCR 1608** - These would create statewide votes on constitutional amendments in the primary election in August 2014 if they receive 2/3 votes of both houses of the legislature.

**SCR 1602** - This would create a statewide vote on a constitutional amendment in the November 2014 general election.

## 2014 House Bills

**HB 2518** - It would provide for explanatory statements for question submitted elections to be posted at polling places. Currently, explanatory statements are on the ballot for constitutional amendments but not other ballot questions. Under the bill, if the special election was caused by a petition, the CEO may request the county or district attorney or county counselor to draft an explanatory statement subject to approval by the secretary of state. If the special election was not caused by a petition (such as an action by a local governing body), the CEO may request the secretary of state to draft an explanatory statement, subject to approval by the attorney general.

**HB 2592** - This bill would (1) prohibit a candidate who withdrew his/her candidacy or who lost the primary from running in the general election as a candidate for another party or as a write-in, (2) require the SOS to provide written notice to the county party chair when a state officer dies in office (representative, senator or state board of education member) so the chair can call a party district convention to select a replacement, (3) require precinct committee persons who are appointed to fill

vacant positions to be in their positions at least 24 hours before the county party chair receives notice from the SOS of a vacancy in elected office, and (4) establish a limit of four proxy votes to be carried by a precinct committee person who is designated by another precinct committee person to vote for him/her by proxy.

**HB 2594** - This bill would require candidates for state office and city, county, USD and community college positions to reside in their district for two years before filing as candidates or being nominated. The SOS or CEO would be required to verify that the residency requirement is met.

## 2013 House Bills

**HB 2095** - This bill would set four-year term limits on members of the Kansas Governmental Ethics Commission.

**HB 2112** - This is a campaign finance bill that would allow candidates to transfer unused campaign funds from one account to another. For example, a House member who intends to run for Senate must establish a separate campaign finance account for Senate. This bill would allow transfer of unused funds from the House account to the Senate account.

**HB 2113** - This bill would remove statutory designations of the number of judges in various judicial districts in the state.

**HB 2129** - This bill would move the commencement of the term of office for elected county treasurers from the second Tuesday in October to the second Monday in January to coincide with the commencement of terms of other officers.

**HB 2130** - Proposed by the secretary of state, this bill deals with petition circulators. The bill would repeal the statutory requirement that petition circulators be residents of Kansas and would allow petition drive organizers to use (and hire) out of state individuals to circulate petitions in Kansas. The bill is intended to bring state law into compliance with a court case that ruled the state residency requirement unconstitutional.

**HB 2185** - This bill would authorize city-county consolidation by a dual majority vote (separate majority votes in both city and rural areas of county to approve) without prior legislative approval.

**HB 2210** - This bill would prohibit any registered voter from changing his/her party affiliation from the date of the candidate filing deadline in an election year (June 1) through the date the results of the primary election are certified (approximately Sept. 1).

**HB 2226** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. This bill would make all elections for local offices and municipalities partisan. This would affect the following jurisdictions: extension districts, cities, boards of public utilities, water districts, drainage districts, irrigation districts, unified school districts, and community colleges.

**HB 2227** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. This bill would move the elections from the spring of odd-numbered years to the fall of odd-numbered years. They would still be nonpartisan. The

primary would be in August and the general election in November.

**HB 2271** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. This bill would make all local elections partisan and would move them from the spring of odd-numbered years to the fall of even-numbered years to coincide with elections for national, state and county offices. This would affect the following jurisdictions: extension districts, cities, boards of public utilities, water districts, drainage districts, irrigation districts, unified school districts, and community colleges.

**HB 2296** - This is a campaign finance bill that would allow candidates to donate unused campaign funds to tax-exempt and religious organizations in addition to the other entities to which such funds may be donated.

**HB 2314** - This is an ethics bill that would raise from \$100 to \$500 the limit on recreational hospitality that state officers, employees and candidates may accept in a calendar year. The bill excludes spouses of legislators or legislative candidates and excludes transportation from the definition of gift.

**HB 2354** - This is an ethics bill affecting the fees and penalties related to the Governmental Ethics Commission. Fees paid by candidates for statewide office would rise from \$480 to \$650 and for other state office candidates from \$35 to \$50. Lobbying fees paid by certain political committees would rise from \$240 to \$300 and for others, from \$35 to \$50. Penalties assessed by GEC would be deposited in the state general fund rather than in GEC's fee fund.

**HB 2364** - This bill deals with the SOS duty to publish notices of constitutional amendment elections three times in newspapers in every county. The bill would repeal the publication requirement and instead require the SOS to publish the amendments on the SOS web site and issue press releases to media outlets in every county.

**HB 2401** - This is one of a group of bills that would affect local elections in the spring of odd-numbered years. It would move local elections to the fall of odd numbered years. Some would be partisan, some nonpartisan. Ballot rotation is maintained for some jurisdictions and not for others. At-large elections are prohibited for some jurisdictions but not for others. Language from the 2008 law limiting the number of primaries in USDs is deleted, but it is maintained for cities and community colleges.

**HB 2404** - This bill would repeal the laws containing procedures for the establishment of corporate swine and dairy production facilities through elections brought about by petitions or county commission resolutions. Corporate agriculture enterprises could be established without approval by voters.

**HCR 5002, HCR 5003 and HCR 5005** would create statewide votes on constitutional amendments in the primary election in August 2014 if they receive 2/3 votes in both houses of the legislature.

**HCR 5004 and HCR 5007** would create a statewide vote on a constitutional amendment in the November 2014 general election. ■

# Presidential Election Commission Issues Report

**P**resident Barack Obama appointed a presidential commission after the 2012 election to conduct a study and make recommendations for improving the voting experience. The original concept behind the commission was formed as a result of widespread reports of long wait times in voter lines at the presidential election in November 2012. The commission was not limited to studying long lines, however.

The bipartisan ten-member commission, officially named the Presidential Commission on Election Administration, was appointed on March 28, 2013, and asked to complete its study in six months and release its report in early 2014. The report was submitted to the President on January 22, 2014.

In his reelection victory speech in 2012, Obama thanked “every American who participated in this election - whether you voted for the very first time or waited in line for a very long time. By the way, we have to fix that.”

In appointing the Commission, the President said, “No American should have to wait more than half an hour to vote. And they should know, they should be confident that their vote is being properly counted and is secure.”

In its report, the Commission found that “jurisdictions can solve the problem of long lines through a combination of planning... and the efficient allocation of resources.” The Commission concluded that no citizen should have to wait in line for more than 30 minutes to vote.



Voters had to wait in long lines, sometimes for hours, before they could cast their vote in the general election on November, 5, 2012.

Photo by Paul Tople/AP

Other recommendations found in the report include:

- An expansion of online voter registration by the states to enhance both accuracy of the voter rolls and efficiency;
- Having all states update and exchange their voter registration lists to create the most accurate lists possible to increase registration rates, reduce costs, and protect against fraud;
- The expansion of voting before Election Day, recognizing that the majority of states now provide either mail balloting or in-person early voting and that voters are increasingly seeking these options;
- The increased use of schools as polling places, since they are the best-equipped facilities in most jurisdictions, with security concerns met by scheduling an in-service training day for students and teachers on Election Day;
- Recognizing and addressing the impending crisis in voting technology as machines bought 10 years ago with post-2000 federal funds wear out and require replacement with no federal appropriations on the horizon;
- To usher in this needed next generation of equipment, reforming the standards and certification process to allow innovation and the adoption of widely available and significantly less expensive off-the-shelf technologies and software-only solutions;
- Improving the ability of military and overseas voters to access ballots and other voting materials through the states’ websites;
- The increased use of electronic pollbooks for greater accuracy and efficiency;
- Assuring that polling places are accessible to all voters, are located close to where voters live and are designed to function smoothly;
- Increasing and enhancing training and recruitment of poll workers, in the recognition that volunteer poll workers are voters’ primary source of contact during the actual voting process;
- Having jurisdictions form advisory groups to address the needs of voters with disabilities and those with limited English proficiency; and
- Collecting election data on a uniform basis to enable enhanced analysis to improve the voter experience.

The members of the Commission were:

- **Robert F. Bauer**, Commission Co-Chair - Partner, Perkins Coie LLP and former counsel to President Obama’s campaigns in 2008 and 2012
- **Benjamin L. Ginsberg**, Commission Co-Chair - Partner, Patton Boggs LLP and former counsel to Mitt Romney’s

presidential campaigns in 2008 and 2012

- **Brian Britton** - Vice President, Global Park Operations and Planning at Walt Disney Parks and Resorts
- **Joe Echevarria** - Chief Executive Officer, Deloitte LLP
- **Trey Grayson** - Director, Institute of Politics at the John F. Kennedy School of Government at Harvard University and former Kentucky Secretary of State
- **Larry Lomax** - Clark County (Nevada) Registrar
- **Michele Coleman Mayes** - Vice President, General Counsel and Secretary for the New York Public Library
- **Ann McGeehan** - Assistant General Counsel, Texas County and District Retirement System and former Texas State Election Director
- **Tammy Patrick** - Federal Compliance Officer, Maricopa County (Arizona) Elections Department
- **Christopher Thomas** - Director of Elections, Michigan Department of State

Professor **Nathaniel Persily** of Stanford University served as the Commission's Research Director. ■

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## Update on Litigation

Several court cases involving the secretary of state's office continue to slowly work their way through the judicial system at both the federal and state levels. As reported in a recent article in this newsletter, there are currently three lawsuits requiring the attention of Secretary Kobach, his legal division, and, to some extent, members of his elections staff (see *Canvassing Kansas*, December 2013, page 5). Here is an update.

### **1. Arthur Sprye and Charles Hamner v. Kris W. Kobach**

In a suit filed November 1, 2013, two Osage County voters challenged the constitutionality of the photo ID requirement.

**Recent actions:** The secretary of state removed the case to federal court. The plaintiffs subsequently filed a motion to remand the case back to state court. As of this writing the plaintiffs' motion has not been ruled upon.

### **2. Kris W. Kobach, Kansas Secretary of State; and Ken Bennett, Arizona Secretary of State; v. United States Election Assistance Commission**

See page 1.

### **3. Aaron Belenky, Scott Jones and Equality Kansas v. Kris Kobach, Kansas Secretary of State, and Brad Bryant, Kansas Elections Director**

In a suit filed November 21, 2013, the plaintiffs seek declaratory and injunctive relief to keep the secretary of state's office from implementing a dual voter registration system. The SOS office had developed contingency plans to administer voter registration and ballots to individuals who attempted to register using the universal federal form but who had not provided proof of U.S. citizenship in compliance with Kansas law. No actions have been taken to implement the plan, and no federal elections have occurred in which federal-only ballots were administered to these voters.

**Recent actions:** The secretary of state removed the case to federal court and filed a motion to stay all proceedings pending a ruling in the EAC case (cited above). The plaintiffs subsequently filed a motion to remand the case back to state court. Neither the secretary of state's motion to stay nor the plaintiffs' motion to remand have been ruled upon as of this writing. ■

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## Dominion Voting System Certified

On December 27, 2013, Secretary of State Kris Kobach issued a letter officially certifying the Dominion Voting Systems Democracy Suite version 4.14. As reported earlier in this newsletter (see *Canvassing Kansas*, December 2013, page 8), Dominion, working through its Kansas service provider, Election Source, had formally requested certification in Kansas in a letter dated October 4, 2013.

A certification hearing was conducted in the Secretary of State's office on November 21, 2013, and as a result of the hearing and a subsequent review of the system's components, certification was granted. In compliance with Kansas policy, the Dominion system was federally approved before being considered for certification, and it had received EAC certification number DemSuite-4-14 on July 18, 2013.

The Dominion system joins the Unisyn OpenElect Voting System 1.2 as the only two new and complete voting systems to receive Kansas certification since the busy certification period in 2004-05 which occurred due to the requirements of the Help America Vote Act of 2002.

As county election officers make plans to replace aging fleets of voting equipment, these two newly certified systems are among the choices to be considered. Another vendor, Election Systems & Software, has signaled its intention to bring its new system in for Kansas certification in the near future. ■

# Cheyenne County Clerk Terry Miller Resigns

**T**erry Miller, Cheyenne County Clerk since 2001, resigned his position in a letter to the governor dated February 14, 2014. He plans to stay in the office until May 31 after a successor has been named and has had a chance to get acclimated to the duties.

Terry and his wife, who is a physician, will be moving to Long Beach, California. Before being elected county clerk in 2000, Terry was trained as a medical lab technician, so it was quite a change for him when he assumed his duties as a county elected official. He cites many of his fellow county clerks as the people who helped him learn his new duties, meet the other clerks, and become active in KCCEOA. In particular, he remembers how certain clerks, including Becky Mishler in Clark County, Mary Gilmore in Morton County, and Alice Smith in Comanche County, would “drag me out of my room and force me to get to know everyone.”

Terry is thankful for the help he’s received from the clerks in the northwest regional association and the entire KCCEOA. “From

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## Brian Newby Serves as Election Observer

**J**ohnson County Election Commissioner Brian Newby served as an international election observer in the Republic of Georgia last fall. The program in which he participated is sponsored by the Organization for Security and Cooperation in Europe (OSCE), which includes member nations from Europe, Central Asia and North America. OSCE operates its election observer missions through its Office for Democratic Institutions and Human Rights (ODIHR).

Newby’s assignment was to observe the voting, counting and tabulation processes on October 27, 2013, in Samtredia, which is near the Black Sea. He was one of 300 short-term observers broken into teams of two and deployed to various areas in Georgia. The mission also included a number of long-term observers.

Kansas election officials hosted two long-term observers from OSCE/ODIHR in the weeks leading up to the presidential general election in 2012. Aleksandra Tomic from Bosnia and Soren Sonderstrup from Denmark spent two days in the secretary of state’s office interviewing staff members, then visited county election offices in Wyandotte, Sedgwick, Jackson and Ford counties (See Canvassing Kansas, December 2012, page 5). ■

the Kansas East Coast to the Kansas West Coast, there is not a better group of people than the clerks and election officials,” he said. Terry also thanked his longtime deputy, Deb Lindsten, who has been with him since 2002.

Among the accomplishments of the clerk’s office during his tenure, Terry mentioned that when he took office everything was done on paper. They have moved into the computer age and left green bar printer paper behind. They have a web site that has reduced the number of calls to his office, particularly on election night.

Terry has not yet secured his next job in the Long Beach area but both he and his wife have some prospects. We in the secretary of state’s office wish Terry the best in his new adventure, and we appreciate all that he has done for Cheyenne County and the state of Kansas. His efficiency on the job, positive attitude, and, possibly most of all, his sense of humor will be missed. ■

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## ELVIS ‘Suspense’ Records

**W**ith the passage of the SAFE Act, state and local officials have been working to assist people who are registering to vote for the first time and need to provide proof of citizenship. People who are not currently registered to vote, and have completed a voter registration application, must provide proof of citizenship in order to be eligible to vote. Persons who have not yet provided proof of citizenship are entered into the ELVIS system with a status of ‘Suspense’ with a reason of ‘Proof of citizenship not submitted.’ As of the end of February, there were approximately 15,000 applicants in ELVIS who had not yet provided proof of citizenship. The secretary of state’s office refers to these records as incomplete (along with all other records that are deficient in some manner and are not fully registered to vote). This number has been reduced by a recent program initiated with the Office of Vital Statistics in the Kansas Department of Health and Environment (KDHE). Each month, the SOS office sends to Vital Statistics the latest group of voter registration applications to determine if the applicants have Kansas birth certificates. To date, there have been more than 8,000 incomplete registrations that have successfully been matched with their Kansas birth certificates. In addition, county election officers continue to reach out to applicants to help provide proof of citizenship. We appreciate all those efforts and will continue to work to provide assistance to those who need it. ■