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NON-CITIZENS: OUTLAWED FROM VOTING IN OUR TRUSTED ELECTIONS ACT OF 2023

APRIL 15, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STEIL, from the Committee on House Administration, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4460]

The Committee on House Administration to whom was referred the bill (H.R. 4460) to amend the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 to ensure that only eligible American citizens may participate in elections for Federal office, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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49–006

PURPOSE AND SUMMARY

H.R. 4460, the Non-citizens: Outlawed from Voting in Our Trusted Elections Act of 2023 or the NO VOTE for Non-Citizens Act of 2023, introduced by Representative Morgan H. Griffith (VA–09), prohibits the use of any federal taxpayer dollars to support voting by non-citizens anywhere in the country, regardless of State or local law that may otherwise permit non-citizens to vote in a State-controlled election for State and/or local offices. Specifically, this means that no federal funds may be used to develop or maintain a voter registration list that contains non-citizens or to develop or use a ballot that is made available to non-citizens in elections where non-citizens can vote. In effect, the NO VOTE For Non-Citizens Act of 2023 would require bifurcated elections in any State that permits non-citizens to vote in its State-controlled elections, a federal election, where only eligible American citizens may vote, and a State-controlled election, that allows non-citizens to vote for State and/or local offices according to State law. Further to this point, the NO VOTE for Non-Citizens Act of 2023 would impose an additional penalty on any such State by reducing by 30 percent the amount of federal elections grant funds available to support its citizen-only federal elections.

The legislation also clarifies that the National Voter Registration Act allows States to remove noncitizens from their voter rolls at any time. It requires any federal government entity to provide States, upon request, with the information relevant to the status of an individual as a registered voter in federal elections. Finally, as noncitizens cannot serve on a federal jury, the bill requires United States federal district courts to transmit the names of noncitizens dismissed as potential jurors to the relevant State Chief Election Official so that they can ensure the individual is not listed on the State's voter roll.

The U.S. Constitution protects the right of *citizens* of the United States to vote, and federal law makes it unlawful for noncitizens to vote in federal elections. As some local jurisdictions permit noncitizens to vote in local elections, this legislation clarifies that no federal dollars may be used to fund those efforts and effectively requires States that permit non-citizens to vote in their State-controlled elections for State and/or local office to bifurcate their elections in order to protect and reserve the federal franchise only for eligible American *citizens*. As a further penalty, any such State will also see reduced by 30 percent their share of any future federal election grants, which can be used only to support the state's *citizen*-only federal elections. States also need access to the information necessary to remove noncitizens from their voter rolls, which, in many cases, is maintained only by the federal government. That is why the legislation requires federal entities to provide information they possess with respect to an individual's citizenship status to states upon request and requires all United States federal district courts to transmit the names of noncitizens dismissed as potential jurors to the relevant state Chief Election Official so that they can ensure the individual is not listed on the state's voter roll.

BACKGROUND AND NEED FOR LEGISLATION

BACKGROUND

Article I, Section 4 of the United States Constitution[1] ("the Elections Clause") explains that the States have the primary authority over election administration, the "times, places, and manner of holding elections[.]" Conversely, the Constitution grants the Congress a purely secondary role to alter or create election laws only in the extreme cases of invasion, legislative neglect, or obstinate refusal to pass election laws.[2] As do other aspects of our federal system, this division of sovereignty continues to serve to protect one of Americans' most precious freedoms, the right to vote.[3]

The federal Constitution contains several voting rights amendments, all of which only protect "the right of citizens of the United States" in the voting process.[4] To enforce those rights, federal law makes it unlawful for non-citizens to vote in federal elections.[5] Similarly, federal law prohibits foreign nationals[6] from contributing or donating in connection with a federal, state, or local election,[7] making a contribution or donation to a committee of a political party,[8] or making an expenditure (including an independent expenditure) or disbursement for an electioneering communication.[9] Although the Supreme Court of the United States has never

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[1] U.S. Const. art. I, § 4, cl. 1 ("[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . ."). Further, Article II, Section I gives States the power to appoint presidential and vice-presidential electors in a manner that their legislature may direct. *See* U.S. Const. art. II, § 1, cl. 2. As with the Elections Clause, Congress has limited power over the selection of presidential and vice-presidential electors.

[2] Although the text of the Elections Clause, read literally and without the benefit of context, might suggest Congress has unlimited authority in this space, an examination of an examination of history, precedent, the Framers' words, debates concerning ratification, the Supreme Court, and the Constitution itself provide that this is not the case. *See* Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

[3] *Id.*

[4] *See* U.S. Const. Amend. XV, § 1 "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."; U.S. Const. Amend. XIX, § 1 "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."; U.S. Const. Amend. XXIV, § 1 "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."; U.S. Const. Amend. XXVI, § 1 "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."

[5] *See* 18 U.S.C. § 611. Each of the voting rights amendments listed in the previous footnote provide the authority for Congress to enforce the amendment by appropriate legislation. In South Carolina v. Katzenbach, the Supreme Court held that Congress has the power to act under this authority as it would any of its powers under Article I, Section 8 as articulated in McCulloch v. Maryland. See South Carolina v. Katzenbach, 383, U.S. 301, 326–27 (1966). Even if a State has the sovereign authority, no State should permit non-citizens to cast ballots in State or local elections. See U.S. Const. Amend. XIV; U.S. Const. Amend. XV; U.S. Const. Amend. XIX; U.S. Const. Amend. XXIV; U.S. Const. Amend. XXVI.

[6] Federal law defines foreign national as an individual who is not a citizen of the United States and not lawfully admitted for permanent residence under 8 U.S.C. § 1101(a)(20) or a foreign principal, as defined in 22 U.S.C. § 611(b).

[7] 52 U.S.C. § 30121(a)(1)(A).

[8] *Id.* at § 30121(a)(1)(B).

[9] *Id.* at § 30121(a)(1)(C). Federal law defines an electioneering communication as "any broadcast, cable, or satellite communication which—refers to a clearly identified candidate for Federal office; is made within—60 days before a general, special, or runoff election for the office sought by the candidate; or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the can-

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been presented with the question whether the foreign national prohibition violates the First Amendment, it has previously affirmed a three-judge court's decision, authored by then-Judge Kavanaugh, that upheld the foreign national prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates.[10]

While the Elections Clause provides States the primary authority over election administration, it and other constitutional provisions also provide States the power to establish voter qualifications. Specifically, "Article I, § 2, cl. 1, provides that electors in each State for the House of Representatives 'shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature,' and the Seventeenth Amendment adopts the same criterion for senatorial elections."[11] Similarly, Article II gives State legislatures the power to appoint presidential electors[12] and every State has delegated this responsibility to its voters.[13] States can establish voter qualifications for voters voting in a presidential election that do not run afoul of other constitutional commands.[14] These explicit constitutional commands make clear that States are given the authority to establish voter qualifications, *not* Congress; a principle the Supreme Court has reaffirmed twice in the past decade.[15]

Every State has used its constitutional authority to establish voter qualifications often consisting of age, residency, and citizenship requirements.[16] Several States have enshrined U.S. citizenship in their State constitution as a qualification for voters to vote

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didate; and in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate." *Id.* at § 30104(f)(3).

[10] *See* Bluman v. FEC, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), aff'd, 565 U.S. 1104 (2012). Importantly, the three-judge decision did not rely on Congress' power under the Elections Clause of Article I, Section 4 to justify the foreign national spending prohibition. On November 30, 2023, the U.S. House of Representatives Committee on House Administration passed H.R. 3229, Stop Foreign Funds in Elections Act out of committee. That legislation prohibits foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation to a State or local ballot initiative, referendum, or recall election. Like the decision referenced above, the Committee does not believe H.R. 3229 would be enacted pursuant to the Elections Clause. Cf. Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021),https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

[11] Arizona v. Inter Tribal Council of Ariz., Inc, 133 S.Ct. 2247, 2258 (2013).

[12] U.S. Const. Art. II, § 1, cl. 2 "Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors . . ." *See also* Bush v. Gore, 531 U.S. 98, 104 (2000) ("The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college.")

[13] *See* Chiafalo v. Washington, 140 S.Ct. 2316, 2328 (2020) ("State election laws evolved to reinforce that development, ensuring that a State's electors would vote the same way as its citizens. As noted earlier, state legislatures early dropped out of the picture; by the mid-1800s, ordinary voters chose electors.").

[14] *See* Williams v. Rhodes, 393 U.S. 23, 28–29 (1968) ("State laws enacted pursuant to Art. II, § 1, of the Constitution to regulate the selection of electors must meet the requirements of the Equal Protection Clause of the Fourteenth Amendment.") *See also* Bush v. Gore, 531, U.S. 98, 104–05 ("The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.").

[15] *See* Inter Tribal Council of Ariz., Inc, 133 S.Ct. at 2258; Husted v. A. Phillip Randolph Institute, 138 S. Ct. 1833, 1846 (2018) ("The Constitution gives States the authority to set the qualifications for voting in congressional elections, Art. I, § 2, cl. 1; Amdt. 17, as well as the authority to set the "Times, Places and Manner" to conduct such elections in the absence of contrary congressional direction, Art. I, § 4, cl. 1.").

[16] *See* Kramer v. Union Free School District, 395 U.S. 621, 625 (1969) (" . . . States have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot."); *See also* Carrington v. Rash, 380 U.S. 89, 91 (1965) ("There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise.").

in State elections.[17] The Constitution permits States to enforce their U.S. citizenship qualification in different ways. Some States require applicants to provide documentary proof of citizenship [18] while others only require the applicant to swear or affirm they are a citizen of the United States.[19]

The National Voter Registration Act ("NVRA") was signed into law by President Bill Clinton in 1993 "to establish procedures that will increase the number of eligible *citizens* who register to vote in elections for Federal office; . . . protect the integrity of the electoral process; and . . . ensure that accurate and current voter registration rolls are maintained." [20] The legislation is commonly referred to as the "motor voter" law because it requires States to provide individuals with voter registration materials when they apply for a driver's license.[21]

Although almost every State does not allow noncitizens to vote in their elections, over 20 States allow noncitizens to apply for driver's licenses.[22] Unfortunately, because of human error in the process at the counter or in the computer system, noncitizens will be given voter registration forms and might unlawfully register to vote in at least some situations. This is not a hypothetical as Pennsylvania admitted that just a few years ago it had inadvertently allowed over 10,000 noncitizens to register to vote via this process,[23] and Texas has had similar problems with nearly 100,000 registrations.[24] And now that Pennsylvania and other States have implemented automatic voter registration when an applicant obtains a new or renewed driver license or identification card, unless the applicant affirmatively opts-out, there is a strong possibility that at least some noncitizens will continue to end up on the voter rolls.[25] When Illinois implemented automatic voter registration like this several years ago, hundreds of noncitizens ended up on the voter rolls.[26]

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[17] *See* Laws permitting noncitizens to vote in the United States, Ballotpedia, available at https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States.

[18] *See, e.g.* A.R.S. § 16–121.01; MS Code § 23–15–15.

[19] *See* MINN. STAT. 201.071 (2023) (explaining that an applicant must certify they are a citizen of the United States when they register to vote, but no documentary proof of citizenship is required.) *See also* National Mail Voter Registration Form, U.S. Election Assistance Commission (Dec. 29, 2023), https://www.eac.gov/voters/national-mail-voter-registration-form (the National Mail Voter Registration Form only requires applicants registering to vote in a federal election to swear or affirm they are a United States citizen.).

[20] 52 U.S.C. § 20501(b).

[21] *Id.* at § 20503(a).

[22] *See States Offering Driver's Licenses to Immigrants,* National Conference of State Legislatures (Mar. 13, 2023), https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants.

[23] Rowan Scarborough, Stephen Dinan, *Pennsylvania admits to 11,000 noncitizens registered to vote,* Washington Times (Jan. 30, 2019), https://www.washingtontimes.com/news/2019/jan/30/pennsylvania-11000-non-citizens-registered-vote/.; Pam Fessler, *Some Noncitizens Do Wind Up Registered To Vote, But Usually Not On Purpose,* National Public Radio (Feb. 26, 2019), https://www.npr.org/2019/02/26/697848417/some-noncitizens-do-wind-up-registered-to-vote-but-usually-not-on-purpose.

[24] Alexa Ura, *Texas' renewed voter citizenship review is still flagging citizens as "possible non-U.S. citizens"*, The Texas Tribune (Dec. 17, 2021), https://www.texastribune.org/2021/12/17/texas-voter-roll-review/.

[25] *Governor Shapiro Implements Automatic Voter Registration in Pennsylvania, Joining Bipartisan Group of States That Have Taken Commonsense Step to Make Voter Registration More Streamlined and Secure,* Governor Josh Shapiro (Sept. 19, 2023), https://www.governor.pa.gov/newsroom/governor-shapiro-implements-automatic-voter-registration-in-pennsylvania-joining-bipartisan-group-of-states-that-have-taken-commonsense-step-to-make-voter-registration-more-streamlined-and-secure/.

[26] Mike Lowe, *Hundreds of non-citizens registered to vote in Illinois due to technical glitch,* WGN9 (Jan. 21, 2020), https://wgntv.com/news/hundreds-of-non-citizens-registered-to-vote-in-illinois-due-to-technical-glitch/.

Jurisdictions that allow noncitizen voting or those that inadvertently or negligently place noncitizens on their voter rolls cause problems for federal district courts that utilize a State's voter registration list to identify prospective jurors. Federal law prohibits noncitizens from serving on a federal jury.[27] However, to find prospective jurors that are a representative cross section of the relevant community, federal district courts utilize State databases, including the States' "voter registration lists or the lists of actual voters of the political subdivisions within the district or division."[28] As a result, federal district courts that utilize these lists with noncitizens on them and call, only to dismiss noncitizen jurors because they cannot serve on a federal jury. But federal law does *not* require the federal district court to transmit that dismissed noncitizen juror to the State for removal from the rolls.

The NVRA allows States to remove registered voters from its voter rolls if the registrant requests it, if State law prohibits those individuals from exercising the franchise by reason of criminal conviction or mental incapacity, or if the State carries out a general program to remove voters that have died or moved.[29] With the exceptions provided for in the preceding sentence, a State, within 90 days prior of a primary or general election for federal office can undertake a program with the purpose of *systematically* removing ineligible voters from its voter rolls.[30] In addition, the NVRA also imposes strict guidelines the State must follow in carrying out a program to remove voters that have moved.[31]

While the NVRA is premised squarely on citizens voting in federal elections,[32] it does not expressly provide States with the authority to remove noncitizens from voter rolls. The NVRA's silence on this question only makes matters worse when combined with its convoluted provision concerning the timing of a State's removal of ineligible registrants from its voter rolls. For example, in 2012, the Florida Secretary of State removed identified noncitizens from the State's voter rolls within the 90-day period before the primary and general election.[33] When this program was challenged as unlawfully occurring within the NVRA's restricted 90-day timeframe, the district court held noncitizen removal was exempt from the NVRA's restrictions because those only applied to registrants who were lawfully registered to vote in the first instance.[34] But the United States Court of Appeals for the Eleventh Circuit reversed the district court, holding that the 90-day timeframe applies to *any* systematic removal program except for those that execute removal upon request or death of the registrant, or as provided by State law by reason of criminal conviction or mental incapacity.[35]

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[27] 28 U.S.C. § 1865(b)(2).
[28] *Id.* at § 1863(b)(2).
[29] 52 U.S.C. § § 20507(a)(3)–(4).
[30] *Id.* at § 20507(c)(2)(A).
[31] *Id.* at § 20507(b)–(e).
[32] *See Id.* at § § 20501(a)–(b) (explaining that in the NVRA, Congress found the right of *citizens* to vote in the United States was a fundamental right, and two purposes of the NVRA are to increase the number of eligible *citizens* who register to vote and enhance their participation in elections for Federal office.).
[33] Arcia v. Florida Secretary of State, 772 F. 3d 1335, 1339–40 (11th Cir. 2014).
[34] Arcia v. Detzner, 908 F. Supp. 2d 1276, 1282–83 (S.D. FL. 2012).
[35] Arcia, 772 F. 3d at 1345. While the NVRA does not define what a "systematic" plan is, the court found the plan to be systematic because it "did not rely upon individualized information or investigation to determine which names from the voter registry to remove. Rather, the Secretary used a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices." *Id.* at 1344.

Congress created the U.S. Department of Homeland Security (DHS) in response to the terrorist attacks on September 11, 2001, and DHS is the leading federal agency on matters of immigration.[36] DHS houses the Systematic Alien Verification for Entitlements (SAVE) Program which is "designed to help federal, State, tribal, and local government agencies confirm citizenship and immigration status prior to granting benefits and licenses, as well as for other lawful purposes."[37] The SAVE program allows DHS to verify the immigration status or naturalized or derived citizenship status for any individual listed in its database of processed names. The SAVE program is currently utilized for "Social Security benefits, unemployment benefits, education assistance, housing assistance, public health care, Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families, Medicaid, Children's Health Insurance Program (CHIP), conducting background investigations, armed forces recruitment, REAL ID compliance, and other purposes authorized by law."[38] SAVE only provides the requesting agency the information is has regarding the applicant; it does not determine the applicant's eligibility for a specific benefit.[39] While the SAVE program is a potent tool, it cannot verify an applicant's status using only a first and last name[40] but instead requires an individual's first name, last name, date of birth, and a numeric identifier from a U.S. government issued immigration document (*e.g.*, Alien/USCIS Number; Form I–94 etc.) in order to conduct a successful query.[41]

In June of 2012, Florida sued DHS seeking access to the SAVE database to determine whether noncitizens were registered to vote in Florida.[42] Following a settlement, DHS agreed to process requests from several States including Florida, Iowa, North Carolina, and others when they request the citizenship information of applicants registering to vote or registrants already on the rolls.[43] As recently as March of 2022, Georgia used the SAVE database to determine that almost 1,700 applicants that were originally placed into the "pending citizenship" status in its voter registration database were noncitizens.[44] However, DHS does not appear to be granting the same access to the SAVE program to each State, with some States reporting long processing delays or apparently "slow-walk-

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[36] Homeland Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135.

[37] DHS/USCIS/PIA–006 Systematic Alien Verification for Entitlements (SAVE) Program, U.S. Department of Homeland Security, available at https://www.dhs.gov/publication/systematic-alien-verification-entitlements-save-program.

[38] Privacy Impact Assessment for the Systematic Alien Verification for Entitlements Program, U.S. Department of Homeland Security (June 30, 2020), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis006c-save-july2020.pdf.

[39] *Id.*

[40] *Id.*

[41] U.S. Citizen and Immigration Services, *SAVE Verification Process*, (Dec. 19, 2023), https://www.uscis.gov/save/about-save/save-verification-process#:~:text=For%20SAVE%20to%20verify%20a,Departure%20Record%2C%20number%3B%20Student%20and.https://www.uscis.gov/save/about-save/save-verification-process.

[42] *Florida Department of State Receives Commitment from U.S. Department of Homeland Security to Provide Access to Citizenship Database*, Florida Department of State (July 14, 2012), https://dos.fl.gov/communications/press-releases/2012/florida-department-of-state-receives-commitment-from-us-department-of-homeland-security-to-provide-access-to-citizenship-database/.

[43] *Id. See also* Muzaffar Chishti, Faye Hipsman, *State Access to Federal Immigration Data Stirs New Controversy in Debate over Voting Rights*, Migration Policy Institute (Sept. 12, 2013), https://www.migrationpolicy.org/article/state-access-federal-immigration-data-stirs-new-controversy-debate-over-voting-rights.

[44] Citizenship Audit Finds 1,634 Noncitizens Attempted to Register to Vote, Georgia Secretary of State Brad Raffensperger (Mar. 28, 2022), https://sos.ga.gov/news/citizenship-audit-finds-1634-noncitizens-attempted-register-vote.

ing" of requests.[45] Further, the fees charged to States by DHS for use of the SAVE database have limited its use.[46]

Like DHS, the U.S. Social Security Administration (SSA) also maintains information regarding the citizenship status of individuals applying for Social Security numbers or other benefits that can help States confirm the citizenship status of applicants registering to vote or individuals already on the voter rolls. In the United States, having a lawfully issued Social Security number does not confer citizenship status. Rather, some noncitizens will have a Social Security number because they are lawfully authorized to work in the United States or have been admitted for permanent residence,[47] but because they are not citizens, they are not permitted to vote or register to vote in federal elections and in almost every State for State elections. However, federal law is particularly strict on when the SSA is allowed to provide citizenship information to requesting agencies, and confirming the citizenship status of an applicant or registered voter is not a lawful disclosure.[48] As such, States do not currently ask SSA for this information.

In 1996, Congress enacted legislation that prohibited noncitizens from voting in federal elections.[49] Since that time, a number of local jurisdictions have permitted noncitizens to vote in their elections.[50] Among others, the list includes 11 jurisdictions in Maryland, 3 jurisdictions in Vermont, at least 1 jurisdiction in California, New York City, and the District of Columbia.[51] While successful court challenges have hobbled some efforts like in San Francisco and New York City,[52] other challenges have failed.[53] For example, the Vermont Supreme Court held that the Vermont Constitution does *not* prohibit cities from allowing noncitizens to vote in local elections.[54] And after the District of Columbia allowed noncitizens to vote in its elections, Congress, at the time of printing,

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[45] This information was provided by Texas to Committee on House Administration staff during oversight travel in March of 2022. *See also* Committee on House Administration's Faith in Elections Project.

[46] Several States have complained to staff on the Committee on House Administration during oversight travel regarding the fees imposed by the Department of Homeland Security when a State requests it use its SAVE database to help with voter verification efforts.

[47] Abigail F. Kolker, William R. Morton, Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers, Congressional Research Service (Mar. 22, 2023), https://crsreports.congress.gov/product/pdf/R/R47483.

[48] Disclosure of Social Security Numbers, Office of Privacy and Civil Liberties U.S. Department of Justice (Oct. 11, 2022), https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/ssn. The Committee on House Administration believes federal law should be amended to require the Social Security Administration to share its Death Masterfile to help States determine whether voters on their rolls are still living.

[49] 18 U.S.C. § 611; *See also* Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Section 217.

[50] Ballotpedia, *supra* note 17.

[51] *Id.* Recently, the San Francisco's Board of Supervisors unanimously voted to appoint a noncitizen to San Franisco's Election Commission despite the fact she cannot vote in federal or statewide California races. *See* Gabriel Hays, *Immigrant from Hong Kong becomes first non-US citizen appointed to San Francisco Election Commission*, (Feb. 16, 2024), https://www.foxnews.com/media/immigrant-hong-kong-becomes-first-non-us-citizen-appointed-san-francisco-election-commission.

[52] In mid-February 2024, the Appellate Division for the Second Judicial Department in New York affirmed a lower court's ruling that New York City's noncitizen voting law violated the New York Constitution as the state constitution protects the right of citizens of the United States to vote, not citizens of New York. *See* Fossella v. Adams,_ AD3d _, 2024 NY Slip Op 00891 (2nd Dept 2024).

[53] Ballotpedia, *supra* note 17.

[54] Ferry, et al. v. City of Montpelier, 2023 VT 4.

has failed to override the law in the requisite time to prevent it from going into effect.[55]

Following the 2000 presidential election, Congress enacted the Help America Vote Act of 2002 ("HAVA") to help States and territories upgrade their voting systems and to improve the administration of federal elections. HAVA authorizes three distinct State[56] funding programs. Section 101 provides payments for, among other things, improving the administration of elections for federal office, educating voters on voting procedures, voting rights, and voting technology, and training election officials, poll workers, and election volunteers.[57] Section 102 provided States with payments to help them replace punch card or lever voting machines.[58] Finally, Section 251 directs the Election Assistance Commission ("EAC") to provide "requirements payments" to help States carry out other parts of HAVA such as implementing provisional voting, providing information at polling places, developing and maintaining a computerized voter registration list, and implementing identification requirements for first-time voters who register by mail.[59] Each program has a distinct formula to determine the funds for each section.[60] These funds are distributed at the State level; States determine how best to distribute HAVA funds (*e.g.*, to county or other local elections officials) to ensure the grant parameters are met. To ensure HAVA funds are being used in a lawful manner, the EAC's Office of Inspector General "conducts periodic fiscal audits of State HAVA fund expenditures and determines if any corrective actions are necessary to resolve issues identified during audits."[61]

In the 117th Congress, former Ranking Member on the Committee on House Administration, Representative Rodney Davis (IL–13), introduced H.R. 7959, the Non-citizens: Outlawed from Voting in Our Trusted Elections Act of 2022.[62] This legislation is substantially similar to Representative Griffith's H.R. 4460. Similarly, former Ranking Member Davis introduced H.R. 8528, the American Confidence in Elections Act,[63] which also contained H.R. 7959.

In the 118th Congress, Representative Bryan Steil (WI–01), introduced H.R. 4563, an updated version of the American Confidence in Elections Act[64] ("ACE Act"), which includes Representative Griffith's H.R. 4460, the Non-citizens: Outlawed from Voting in Our Trusted Elections Act of 2023.

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[55] Under the District of Columbia Home Rule Act, Congress had 30 days to override the Local Resident Voting Rights Amendment Act of 2022 that allowed noncitizens to vote if they are 18 years of age and have resided in the District for 30 days. The U.S. House of Representatives passed a disapproval resolution on February 9, 2023. *See* H.J. Res. 24, Disapproving the action of the District of Columbia Council in approving the Local Resident Voting Rights Amendment Act of 2022, 118th Cong. § 1 (2023). However, the U.S. Senate has not acted on the disapproval resolution.

[56] See 52 U.S.C. § 21141 defining "State" to include the District of Columbia and the U.S. territories.

[57] *Id.* at U.S.C. § 20901.

[58] *Id.* at § 20902.

[59] Id. at § 21001–21008, 21081–21085.

[60] For section 101 payments, *see Id.* at §§ 20901(d), 20903. For section 102 payments, *see Id.* at §§ 20902(c), 20903. For section 251 payments, *see Id.* at 21002.

[61] Audits & Resolutions, U.S. Election Assistance Commission (Aug. 7, 2023), https://www.eac.gov/grants/audits-resolutions.

[62] NO VOTE for Noncitizens Act of 2022, H.R. 7959, 117th Cong. § 2 (2022).

[63] American Confidence in Elections Act, H.R. 8528, 117th Cong. § 2 (2022).

[64] American Confidence in Elections Act, H.R. 4562, 118th Cong. § 1 (2023).

NEED FOR LEGISLATION

Representative Griffith's Non-citizens: Outlawed from Voting in Our Trusted Elections Act of 2023 ("NO VOTE for Non-Citizens Act of 2023") prohibits the use of any federal taxpayer dollars to support voting by non-citizens anywhere in the country, regardless of State or local law that may otherwise permit non-citizens to vote in a State-controlled election for State and/or local offices. Specifically, this means that no federal funds may be used to develop or maintain a voter registration list that contains non-citizens or to develop or use a ballot that is made available to non-citizens in elections where non-citizens can vote. In effect, the NO VOTE For Non-Citizens Act of 2023 would require bifurcated elections in any State that permits non-citizens to vote in its State-controlled elections, a federal election, where only eligible American citizens may vote, and a State-controlled election, that allows non-citizens to vote for State and/or local offices according to State law. Further to this point, the NO VOTE for Non-Citizens Act of 2023 would impose an additional penalty on any such State by reducing by 30 percent the amount of HAVA funds available to support its citizen-only federal elections. The legislation also clarifies that the National Voter Registration Act allows States to remove noncitizens from their voter rolls at any time. It requires any federal government entity to provide States, upon request, with the information relevant to the status of an individual as a registered voter in federal elections. Finally, as noncitizens cannot serve on a federal jury, the bill requires United States federal district courts to transmit the names of noncitizens dismissed as potential jurors to the relevant State Chief Election Official so that they can ensure the individual is not listed on the State's voter roll.

The Committee on House Administration holds sincerely that every eligible American who wants to register to vote should be afforded the opportunity to do so, and the Committee encourages all eligible Americans to exercise their fundamental right to vote according to the Constitution. Almost every State prohibits noncitizens from voting in their elections and federal law prohibits noncitizens from voting in federal elections. Moreover, almost every State requires citizenship as a qualification to register to vote. This legislation empowers States by requiring any federal entity that maintains information relevant to the citizenship status of a registered voter to provide it to a State upon request. With access to, among other things, citizenship information housed by DHS and SSA, States will be better equipped to enforce their citizenship voter qualifications, as well as prohibitions on noncitizen voting. By providing avenues for States to receive this information, the legislation respects a State's constitutional authority to impose reasonable voter qualifications,[65] while acknowledging that much of the information required is maintained by the Federal government.[66]

In the past, many States have used the DHS SAVE database as a successful tool to determine whether someone applying to vote or already registered to vote is a citizen of the United States. The

[65] *See supra* note 16.

[66] See Inter Tribal Council of Arizona, 570 U.S. at 2258–59 (" . . . the power to establish voting requirements is of little value without the power to enforce those requirements, Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.").

database is very reliable as federal, State, local, and tribal governments all use it to confirm the citizenship status for a variety of different programs described above. Similarly, States that require documentary proof of citizenship when applicants register to vote can also utilize this information in the event the applicant does not have documentary proof. Unfortunately, DHS has not been reliable in providing the information necessary when States request it, and the process is slow and expensive.[67] And under the Eleventh Circuit's interpretation of the NVRA, if DHS provides States this information within the 90-day timeframe before a federal primary or general election, States cannot carry out a systematic removal of noncitizens from their rolls.[68] To ensure that DHS, no matter who runs the agency, provides this information to States in a timely fashion, this legislation *requires* DHS, to provide information to help States verify that their voters are citizens of the United States.

In the event the DHS SAVE database does not provide States the information it needs to confirm the citizenship status of an applicant or registered voter, this legislation also allows SSA to provide information to States. SSA can supplement the DHS SAVE database in the event it does not contain the information a State needs to confirm an applicant or voter's citizenship status. SSA can also verify that the information in the DHS SAVE database is accurate. Similarly, other federal entities might also contain information to help States verify the qualifications of applicants or registered voters like the Centers for Medicare & Medicaid Services under the Department of Health and Human Services or the U.S. Postal Service. States can request information from any federal entity to help them confirm the qualifications of their voters.

The legislation also clarifies that States can remove noncitizens from their voter rolls. Although the NVRA is textually silent on this question, the Eleventh Circuit interpreted the statute to allow States to remove noncitizens as long as it did not occur in a systematic way within the 90-day timeframe before a federal primary or general election.[69] Allowing States to remove ineligible voters, like noncitizens, is constitutionally necessary so States can enforce their voter qualifications. This important clarification will give States the assurances they need that they can lawfully remove noncitizens from their voter rolls under the NVRA.

As described above, many States allow noncitizens to receive driver's licenses or other identification cards that comes with a serious risk they end up on a State's voter rolls because the NVRA requires States to provide voter registration materials when individuals apply for a driver's license, and a number of local jurisdictions have recently permitted noncitizens to vote in local elections, thereby intentionally putting noncitizens on a State's voter roll. Because federal law prohibits noncitizens from voting in federal elections, noncitizens being placed on the voter rolls inadvertently or

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[67] Mary Lou Masters, *Exclusive: Chip Roy Introduces Bill To Crack Down On Non-Citizens Voting In US Elections*, Daily Caller (May 5, 2023), https://dailycaller.com/2023/05/05/exclusive-chip-roy-introduces-bill-crack-down-illegal-immigrants-voting-us-elections/.

[68] Arcia, 772 F. 3d at 1345.

[69] Arcia, 772 F. 3d at 1348 (" . . . the 90 Day Provision would not bar a state from investigating potential non-citizens and removing them on the basis of individualized information, even within the 90-day window. All that the 90 Day Provision prohibits is a program whose purpose is to 'systematically remove the names of ineligible voters' from the voter rolls . . .".)

intentionally causes a serious problem. Noncitizen voters are *not* required to be on a separate voter roll. This means noncitizen voters could mistakenly be provided with ballots with federal races on them either by mail or at the polling place. As noncitizen voters can only vote in State or only local races, separate ballots *without* federal races will need to be created for them. This ballot is fundamentally different from other ballots with different congressional, State-specific or local races on them because those ballots all contain federal races. But ballots for noncitizen voters cannot contain federal races.

To protect against the real threat that noncitizens might vote in federal elections, the NO VOTE for Non-Citizens Act of 2023 requires States to have two separate voter lists—one for State elections where noncitizens can vote and one for federal elections where they cannot. It also requires States to produce two separate ballots—one for State elections and one for federal elections. This is to ensure States do not send noncitizen voters ballots with federal races on them and instruct them not to vote in those races. The legislation also prevents any federal funds from going to help States maintain State-specific voter lists or ballots. The reason for this is obvious—as federal law prohibits the same conduct in federal elections, it would be absurd for federal dollars to fund the same practice conducted in a State or locality.

The explosion of noncitizen voting has also become a problem for federal district courts that utilize a State's voter registration list to locate prospective jurors. Similarly, States that allow noncitizens to receive driver's licenses or other identification cards always run the risk that noncitizens might end up on the voter rolls. Because noncitizens cannot serve on a federal jury,[70] this legislation requires the federal district court to transmit the names of dismissed noncitizen jurors to the State's chief election officer so they can be removed from the voter rolls.[71] As some States or localities permit noncitizen voting, the legislation does not require the noncitizen to be removed from the State's voter roll, but would require the noncitizen voter to be placed on a separate State-specific voter list from U.S. citizens that are permitted to vote in federal elections.

The NO VOTE for Non-Citizens Act of 2023 also cuts a State or localities HAVA funds by 30 percent if they allow noncitizen voting in their elections. Federal HAVA dollars are distributed to States based on a specific formula; States then distribute these funds to local jurisdictions for election administration purposes described above. The 30 percent reduction has two effects. First, States or localities cannot use federal dollars to administer an election that allows noncitizens to vote. Second, HAVA funds that go to a State or locality to help them administer elections will have a 30 percent reduction. This reduction will be felt by the State or locality where noncitizen voting is permitted. When Congress enacted HAVA following the 2000 election, at most, only a couple of jurisdictions permitted noncitizen voting.[72] Unfortunately, the practice has now ex-

[70] 28 U.S.C. § 1865(b)(1).

[71] The legislation also requires the name of the dismissed noncitizen juror to be transmitted to the Attorney General of the United States.

[72] 30 YEARS OF NON-CITIZEN VOTING IN TAKOMA PARK, City of Takoma Park, Maryland (Oct. 6, 2023), https://takomaparkmd.gov/newsletter/30-years-of-non-citizen-voting-in-takoma-park/#:~:text=November%20marks%20the%2030th%20anniversary,to%20vote%20in%20municipal%20elections.

ploded, and Congress cannot permit federal dollars to fund noncitizen voting, a practice that is unlawful in federal elections. As such, a 30 percent reduction in HAVA funds will act as a stick against jurisdictions that permit noncitizen voting.[73] If States or localities want to permit noncitizen voting, they should use their own taxpayer dollars to facilitate those elections.

The Committee believes it is an open constitutional question whether State or localities can allow noncitizen voting in their elections. As described above, the federal Constitution's voting rights amendments only protect the right of "citizens of the United States" to vote. And Congress has used the enforcement power those amendments provide to enact the prohibition on noncitizen voting in federal elections. While the Committee respects a State's authority to enact election laws under the Elections Clause that do not run afoul of the federal Constitution, noncitizen voting is a bad practice. It demeans the importance of U.S. citizenship and allows noncitizens that have not established sufficient ties to the State to determine how it should be run. It also comes with substantial risk that noncitizens might improperly vote in federal elections. Nevertheless, this legislation does not prohibit noncitizen voting in States or localities but upon further study of this question, the Committee could take up similar legislation in the future.

In their dissenting views, Committee Democrats attack Committee Republicans for not respecting the decisions of States or local jurisdictions that allow noncitizen voting and "strongarm[ing] local jurisdictions and mandat[ing] extreme partisan restrictions."[74] As described in the paragraph above, this legislation does *not* override any State or local jurisdiction's decision to permit noncitizen voting. The Committee believes it is a bad practice that should not be implemented, but H.R. 4460 does not prohibit it. Similarly, H.R. 4460 only imposes a slight 30 percent reduction in HAVA funds to States that permit noncitizen voting. Finally, at no point in their dissenting views here, or in their dissenting views in any bill passed in the Committee's November 30th, 2023, markup, do Committee Democrats ever defend the practice of noncitizen voting. While they attack Committee Republicans for giving States the tools to enforce their U.S. citizenship voter qualification, they refuse to tell the American people whether they support this truly outrageous practice.

COMMITTEE ACTION

INTRODUCTION AND REFERRAL

On July 3, 2023, Representative Morgan H. Griffith (VA–09) introduced H.R. 4460, the NO VOTE for Non-Citizens Act of 2023. The bill was referred to the U.S. House of Representatives Committee on House Administration and to the U.S. House of Representatives Committee on Judiciary.

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[73] Chris Edwards, *Restoring Responsible Government by Cutting Federal Aid to the States*, Cato Institute (May 20, 2019), https://www.cato.org/policy-analysis/restoring-responsible-government-cutting-federal-aid-states.

[74] Dissenting Views at 1.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee held two full committee hearings and one subcommittee hearing to develop H.R. 4460.

1. On April 27, 2023, the Committee held a full committee hearing titled, "American Confidence in Elections: State Tools to Promote Voter Confidence." The hearing focused on Title I of H.R. 4563, the American Confidence in Elections Act, what tools States need to boost voter integrity and strengthen voter confidence, and how the federal government can provide States with access to the information needed to accomplish these goals. Witnesses included the Honorable Ken Cuccinelli, Chairman, Election Transparency Initiative, the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, the Honorable Mac Warner, West Virginia Secretary of State, the Honorable Donald Palmer Commissioner, U.S. Election Assistance Commission, and Mr. Joseph Paul Gloria, Chief Executive Officer for Operations, Election Center.[75]

2. On May 24, 2023, the Committee on House Administration Subcommittee on Elections held a subcommittee hearing titled, "American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law." The hearing highlighted the strong election integrity reforms that have passed throughout several States and how important it is for States to learn from other States' successes in the election arena. Witnesses included: Mr. Joseph Burns, Lawyer, Law Office of Joseph T. Burns, PLLC, Ms. Lisa Dixon, Executive Director, Lawyers Democracy Fund (now the Center for Election Confidence), Mr. Thor Hearne, Founding Partner, True North Law, LLC, The Honorable Scot Turner, Executive Director, Eternal Vigilance Action Inc., and Mr. Deuel Ross, Deputy Director of Litigation, NAACP Legal Defense and Educational Fund, Inc.[76]

3. On July 10, 2023, the Committee held a full committee field hearing titled, "American Confidence in Elections: The Path to Election Integrity Across America." The hearing outlined the newly introduced H.R. 4563, the American Confidence in Elections Act, and highlighted the successes of S.B. 202 (Georgia), 2021. Witnesses included the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, Dr. Kathleen Ruth, former Vice Chair, Fulton County, Georgia, Board of Registration and Elections, Mrs. Vernetta Keith Nuriddin, Elections Consultant, City of Milton, Georgia, and Ms. Cathy Woolard, Chair, Fulton County, Georgia, Board of Registration and Elections.[77]

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[75] *American Confidence in Elections: State Tools to Promote Voter Confidence: Hearing Before the H. Comm. On Admin.*, 118th Cong. (2023).

[76] *American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law: Hearing Before the Subcomm. On Elections of the H. Comm. On Admin.*, 118th Cong. (2023).

[77] *American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. On Admin.*, 118th Cong. (2023).

COMMITTEE CONSIDERATION

On November 30, 2023, the U.S. House Committee on House Administration met in open session and ordered the bill, H.R. 4460, NO VOTE for Non-Citizens Act of 2023, reported favorably to the House of Representatives, by a record vote of eight to two, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following record vote occurred during the Committee's consideration of H.R. 4460:

1. Vote on an amendment to H.R. 4460, offered by Morelle, J., failed by a record vote of 7 noes and 3 ayes. Noes: Steil, B., Loudermilk, B., Griffith, M., Murphy, G., Bice, S., D'Esposito, A., Lee. L. Ayes: Morelle, J., Sewell, T., Torres, N.

2. Vote to report H.R. 4460 favorably to the House of Representatives, passed by a record vote of 8 ayes and 2 noes. Ayes: Steil, B., Loudermilk, B., Griffith, M., Murphy, G., Bice, S., Carey, D'Esposito, A., M., Lee. L. Noes: Morelle, J., Torres, N.

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
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March 20, 2024

The Honorable Bryan Steil
Chairman
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Steil:

I write regarding H.R. 4460, the NO VOTE for Non-Citizens Act of 2023. Provisions of this bill fall within the Judiciary Committee's Rule X jurisdiction, and I appreciate that you consulted with us on those provisions. The Judiciary Committee agrees that it shall be discharged from further consideration of the bill so that it may proceed expeditiously to the House floor.

The Committee takes this action with the understanding that forgoing further consideration of this measure does not in any way alter the Committee's jurisdiction or waive any future jurisdictional claim over these provisions or their subject matter. We also reserve the right to seek appointment of an appropriate number of conferees in the event of a conference with the Senate involving this measure or similar legislation.

I ask that you please include this letter in your committee's report to accompany this legislation or insert this letter in the *Congressional Record* during consideration of H.R. 4460 on the House floor. I appreciate the cooperative manner in which our committees have worked on this matter, and I look forward to working collaboratively in the future on matters of shared jurisdiction. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Joe Morelle, Ranking Member, Committee on House Administration
The Honorable Jason Smith, Parliamentarian

STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 2, Clause 1—"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."[78] This clause informs Congress that the general authority to establish voter qualifications for the U.S. House rests with the States and not with the Congress.
- Article I, Section 4, Clause 1—"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . ."[79] This clause, consistent with contemporary thought and context, informs Congress that the primary authority to set election law and to administer federal elections rests with the States and not with the Congress.
- Article I, Section 8, Clause 1—"To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; . . ."[80]
- Article I, Section 8, Clause 4—"To establish an uniform Rule of Naturalization, . . . throughout the United States,"[81]
- Article I, Section 8, Clause 18—"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."[82]
- Article II, Section 1, Clause 2—"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: . . ."[83] This clause informs the Congress that the authority to name presidential and vice presidential electors rests with States.
- Article IV, Section 4—"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; . . ."[84]
- The Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-sixth Amendments—"The right of citizens of the United States to vote . . ."[85]
- The Seventeenth Amendment—"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous

[78] U.S. Const. art. I, § 2, cl. 1.
[79] U.S. Const. art. I, § 4, cl. 1.
[80] U.S. Const. art. I, § 8, cl. 1.
[81] U.S. Const. art. I, § 8, cl. 4.
[82] U.S. Const. art. I, § 8, cl. 18.
[83] U.S. Const. art. II, § 1, cl. 2.
[84] U.S. Const. art. IV, § 4.
[85] U.S. Const. Amend. XV; U.S. Const. Amend. XIX; U.S. Const. Amend. XXIV; U.S. Const. Amend. XXVI.

branch of the State legislatures. . . .”[86] This clause informs Congress that the general authority to establish voter qualifications for the U.S. Senate rests with the States and not with the Congress.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be *savings* of an indeterminate amount attributed with this legislation as currently Maryland, Vermont, California, and the District of Columbia permit noncitizen voting. Under this legislation, these jurisdictions will receive a 30 percent reduction in their HAVA funds.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 4460 are to prohibits the use of any federal taxpayer dollars to support voting by non-citizens anywhere in the country, regardless of State or local law that may otherwise permit non-citizens to vote in a State-controlled election for State and/or local offices. This ensures that no federal funds may be used to develop or maintain a voter registration list that contains non-citizens or to develop or use a ballot that is made available to non-citizens in elections where non-citizens can vote. This legislation requires bifurcated elections in any State that permits non-citizens to vote in its State-controlled elections, a federal election, where only eligible American citizens may vote, and a State-controlled election, that allows non-citizens to vote for State and/or local offices according to State law. Further, this legislation imposes an additional penalty on any such State by reducing by 30 percent the amount of federal elections grant funds available to support its citizen-only federal elections. It also clarifies that the NVRA allows States to remove noncitizens from their voter rolls at any time. It requires any federal government entity to provide

[86] U.S. Const. Amend. XVII.

States, upon request, with the information relevant to the status of an individual as a registered voter in federal elections. Finally, as noncitizens cannot serve on a federal jury, the bill requires United States federal district courts to transmit the names of noncitizens dismissed as potential jurors to the relevant State Chief Election Official so that they can ensure the individual is not listed on the State's voter roll.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 4460 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 4460 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

H.R. 4460 does not establish or authorize any new advisory committees.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; findings; sense of Congress

Section 1(a) provides the short title of the bill. The full title is the Non-citizens: Outlawed from Voting in Our Trusted Elections Act of 2023 or the NO VOTE for Non-Citizens Act of 2023.

Section 1(b) provides findings for the legislation that the right to vote in the United States belongs to citizens of the United States, Congress has the constitutional authority to prevent noncitizens from voting in federal elections, noncitizens should not be placed on Federal voter registration lists, and noncitizens being removed from these lists will promote voter confidence in election processes and outcomes.

Section 1(b)(2) provides a Sense of Congress that States need to do more to clean their voter rolls under the National Voter Registration Act, States should not permit noncitizens to vote in their

elections even if they have the power to do so, noncitizen voting weakens the value of citizenship and sows distrust in our elections, and Congress might take further action to ensure States are cleaning their voter rolls in the future.

Section 2. ensuring only eligible american citizens may participate in Federal elections

Section 2(a) amends the National Voter Registration Act to clarify that States can remove noncitizens from their voter rolls.

Section 2(b) amends the National Voter Registration Act to require States or local jurisdictions that allow noncitizens to vote in their elections to maintain a voter registration list that is separate from the list of registrants that are citizens of the United States and eligible to vote in Federal elections.

Section 2(c) amends the Help America Vote Act of 2002 to require States or local jurisdictions that allow noncitizens to vote in their elections to maintain separate ballots for noncitizen voters that cannot vote in Federal elections and citizens of the United States that can.

Section 2(d) cuts any State or local jurisdiction's Federal Help America Vote Act funds by 30 percent if they allow noncitizens to vote in their elections. It also prohibits any federal funds from being used to maintain a separate voter registration list under 2(b) or separate ballots under 2(c).

Section 2(e) requires any federal government entity with information relevant to the status of an individual registered to vote in Federal elections in a State to provide that State, upon request, information about the voter in a secure, accurate, and timely manner.

Section 2(f) requires any United States Federal district court that dismisses a noncitizen juror because noncitizen jurors cannot serve on a federal jury to provide the individual's name and information to the chief State election official of the State in which the individual resides and the Attorney General so the individual can be removed from the State's voter rolls.

Section 2(g) amends the National Voter Registration Act to restate the criminal penalties associated with noncitizen voting in federal elections under 18 U.S.C. § 611.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

NATIONAL VOTER REGISTRATION ACT OF 1993

* * * * * * *

SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

(a) IN GENERAL.—In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 5, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 6, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; [or]

(B) the registrant's status as a noncitizen of the United States; or

[(B)] *(C)* a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 5, 6, and 7 of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; [and]

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public[.]*; and*

(7) in the case of a State that allows individuals who are not citizens of the United States to vote in elections for public office in the State or any local jurisdiction of the State, ensure that the name of any registrant who is not a citizen of the United States is maintained on a voter registration list that is separate from the official list of eligible voters with respect to registrants who are citizens of the United States.

(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) VOTER REMOVAL PROGRAMS.—(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3) (A) or (B) or ⟦(4)(A)⟧ *(4)(A) or (B)* of subsection (a); or

(ii) correction of registration records pursuant to this Act.

(d) REMOVAL OF NAMES FROM VOTING ROLLS.—(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) PROCEDURE FOR VOTING FOLLOWING FAILURE TO RETURN CARD.—(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling

place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) CHANGE OF VOTING ADDRESS WITHIN A JURISDICTION.—In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) CONVICTION IN FEDERAL COURT.—(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 10 of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) REDUCED POSTAL RATES.—(1) Subchapter II of chapter 36 of title 39, United States Code, is amended by adding at the end the following:

* * * * * * *".

(2) The first sentence of section 2401(c) of title 39, United States Code, is amended by striking out "and 3626(a)–(h) and (j)–(k) of this title," and inserting in lieu thereof "3626(a)–(h), 3626(j)–(k), and 3629 of this title".

(3) Section 3627 of title 39, United States Code, is amended by striking out "or 3626 of this title," and inserting in lieu thereof "3626, or 3629 of this title".

(4) The table of sections for chapter 36 of title 39, United States Code, is amended by inserting after the item relating to section 3628 the following new item:

"3629. Reduced rates for voter registration purposes.".

(i) PUBLIC DISCLOSURE OF VOTER REGISTRATION ACTIVITIES.—(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) DEFINITION.—For the purposes of this section, the term "registrar's jurisdiction" means—

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

* * * * * * *

SEC. 12. CRIMINAL PENALTIES.

[A person**]** *(a) IN GENERAL.—A person*, including an election official, who in any election for Federal office—

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for—

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this Act; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by—

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, ficti-

tious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18, United States Code (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31, United States Code), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(b) PROHIBITION ON VOTING BY ALIENS.—

(1) IN GENERAL.—It shall be unlawful for any alien to vote in any election in violation of section 611 of title 18, United States Code.

(2) PENALTIES.—Any person who violates this subsection shall be fined under title 18, United States Code, imprisoned not more than one year, or both.

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HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Help America Vote Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

SEC. 301. VOTING SYSTEMS STANDARDS.

(a) REQUIREMENTS.—Each voting system used in an election for Federal office shall meet the following requirements:

(1) IN GENERAL.—

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall—

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—

(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(D) In the case of a State or local jurisdiction that allows individuals who are not citizens of the United States to vote in elections for public office in the State or local jurisdiction, the ballot used for the casting of votes by a noncitizen in such State or local jurisdiction may only include the candidates for the elections for public office in the State or local jurisdiction for which the noncitizen is permitted to vote.

(2) AUDIT CAPACITY.—

(A) IN GENERAL.—The voting system shall produce a record with an audit capacity for such system.

(B) MANUAL AUDIT CAPACITY.—

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any re-

count conducted with respect to any election in which the system is used.

(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—The voting system shall—

(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

(4) ALTERNATIVE LANGUAGE ACCESSIBILITY.—The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

(5) ERROR RATES.—The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE.—Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

(b) VOTING SYSTEM DEFINED.—In this section, the term "voting system" means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system; and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

(c) CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

(2) PROTECTION OF PAPER BALLOT VOTING SYSTEMS.—For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) EFFECTIVE DATE.—Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

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TITLE IX—MISCELLANEOUS PROVISIONS

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SEC. 907. REDUCTION IN PAYMENTS TO STATES OR LOCAL JURISDICTIONS THAT ALLOW NONCITIZEN VOTING.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, the amount of a payment under this Act to any State or local jurisdiction that allows individuals who are not citizens of the United States to vote in elections for public office in the State or local jurisdiction shall be reduced by 30 percent.

(b) PROHIBITION ON USE OF FUNDS FOR CERTAIN ELECTION ADMINISTRATION ACTIVITIES.—Notwithstanding any other provision of law, no Federal funds may be used to implement the requirements of section 8(a)(7) of the National Voter Registration Act of 1993 (52 U.S.C. 20507(a)(7)) (as added by section 2(b) of the NO VOTE for Non-Citizens Act of 2023) or section 301(a)(1)(D) of the Help America Vote Act of 2002 (52 U.S.C. 21081(a)(1)(D)) (as added by 2(c) of the NO VOTE for Non-Citizens Act of 2023) in a State or local jurisdiction that allows individuals who are not citizens of the United States to vote in elections for public office in the State or local jurisdiction.

TITLE 5, UNITED STATES CODE

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PART I—THE AGENCIES GENERALLY

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CHAPTER 5—ADMINISTRATIVE PROCEDURE

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SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

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§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal

or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986;

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records; or

(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014; [1]

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof,

any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;

(11) pursuant to the order of a court of competent jurisdiction; **[**or**]**

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31**[**.**]***; or*

(13) to an election official of a State in accordance with section 2(e) of the NO VOTE for Non-Citizens Act of 2023.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for

the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any indi-

vidual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United

States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against

such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (*o*), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the

Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (*o*), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (*o*) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.

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DISSENTING VIEWS

H.R. 4460 would slash Help America Votes Act ("HAVA") funds that are critically needed to keep our elections safe—investments necessary to the success of our free and fair elections. HAVA funds are disbursed at a statewide level and benefit everyone—our election infrastructure safeguards the rights of every American.

For example, under H.R. 4460, California would lose 30 percent of its HAVA funds. Committee Republicans might have forgotten Republican candidates received almost four million votes in California in 2022. In fact, over 13 percent of 2022 voters live in just four states—California, New York, Maryland, and Vermont. These four states—which send 23 Republicans to Congress, including the former Republican Speaker of the House and the Chair of the Republican Conference—could lose a third of their HAVA funds under this bill. Voters in those states would see their election infrastructure weakened by House Republicans. These voters would cast ballots in elections that are underfunded—and therefore necessarily less secure and more vulnerable to malicious acts.

The dedicated public servants who administer the elections for the 11 percent of the Republican Conference from the four states above would lose essential funding as a punishment for decisions made outside of their control. At a time when election administrators have repeatedly told this Committee of their dire need for increased funding, slashing these funds would be a grave mistake.

Do Committee Republicans support the power of states to create their own laws, to govern themselves? Are they for local control? Or do they want to use federal power to override and overrule local governments? Committee Republicans seem to enjoy waxing poetic about states' rights and local control. But H.R. 4460 directly contradicts those principles: It strongarms local jurisdictions and mandates extreme partisan restrictions.

Committee Democrats emphatically support election security, but this bill does not increase the security of our elections. With the 2024 elections fast approaching, Congress should be focusing on how it can support election administrators coast to coast. Instead, Republicans have advanced this recycled provision of the American Confidence in Elections Act ("ACE Act") that would slash already scarce funding for election administrators while mandating mandate heavy-handed voter purges using flawed systems that would disproportionately target naturalized citizens.

Committee Republicans have pushed a false narrative that the confidence of the American people is in crisis and have perpetuated election denialism and lies about insecure elections. H.R. 4460 would actually make our elections less secure. This bill would erode

confidence in American elections, as voters would see their already underfunded election officials lose more resources.

JOSEPH D. MORELLE,
Ranking Member.

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