

SAFEGUARD AMERICAN VOTER ELIGIBILITY ACT

JUNE 14, 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

MINORITY VIEWS

[To accompany H.R. 8281]

The Committee on House Administration, to whom was referred the bill (H.R. 8281) to amend the National Voter Registration Act of 1993 to require proof of United States citizenship to register an individual to vote in elections for Federal office, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	7
Background and Need for Legislation .....	8
Committee Action .....	23
Committee Consideration .....	24
Committee Votes .....	24
Committee Oversight Findings .....	24
Statement of Budget Authority and Related Items .....	24
Congressional Budget Office Estimate .....	25
Performance Goals and Objectives .....	25
Duplication of Federal Programs .....	25
Advisory on Earmarks .....	25
Federal Mandates Statement .....	25
Advisory Committee Statement .....	26
Applicability to Legislative Branch .....	26
Section-by-Section Analysis .....	26
Changes in Existing Law as Reported .....	29
Minority Views .....	47

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Safeguard American Voter Eligibility Act” or the “SAVE Act”.

**SEC. 2. ENSURING ONLY CITIZENS ARE REGISTERED TO VOTE IN ELECTIONS FOR FEDERAL OFFICE.**

(a) **DEFINITION OF DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP.**—Section 3 of the National Voter Registration Act of 1993 (52 U.S.C. 20502) is amended—

(1) by striking “As used” and inserting “(a) IN GENERAL.—As used”; and

(2) by adding at the end the following:

“(b) **DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP.**—As used in this Act, the term ‘documentary proof of United States citizenship’ means, with respect to an applicant for voter registration, any of the following:

“(1) A form of identification issued consistent with the requirements of the REAL ID Act of 2005 that indicates the applicant is a citizen of the United States.

“(2) A valid United States passport.

“(3) The applicant’s official United States military identification card, together with a United States military record of service showing that the applicant’s place of birth was in the United States.

“(4) A valid government-issued photo identification card issued by a Federal, State or Tribal government showing that the applicant’s place of birth was in the United States.

“(5) A valid government-issued photo identification card issued by a Federal, State or Tribal government other than an identification described in paragraphs (1) through (4), but only if presented together with one or more of the following:

“(A) A certified birth certificate issued by a State, a unit of local government in a State, or a Tribal government which—

“(i) was issued by the State, unit of local government, or Tribal government in which the applicant was born;

“(ii) was filed with the office responsible for keeping vital records in the State;

“(iii) includes the full name, date of birth, and place of birth of the applicant;

“(iv) lists the full names of one or both of the parents of the applicant;

“(v) has the signature of an individual who is authorized to sign birth certificates on behalf of the State, unit of local government, or Tribal government in which the applicant was born;

“(vi) includes the date that the certificate was filed with the office responsible for keeping vital records in the State; and

“(vii) has the seal of the State, unit of local government, or Tribal government that issued the birth certificate.

“(B) An extract from a United States hospital Record of Birth created at the time of the applicant’s birth which indicates that the applicant’s place of birth was in the United States.

“(C) A final adoption decree showing the applicant’s name and that the applicant’s place of birth was in the United States.

“(D) A Consular Report of Birth Abroad of a citizen of the United States or a certification of the applicant’s Report of Birth of a United States citizen issued by the Secretary of State.

“(E) A Naturalization Certificate or Certificate of Citizenship issued by the Secretary of Homeland Security or any other document or method of proof of United States citizenship issued by the Federal government pursuant to the Immigration and Nationality Act.

“(F) An American Indian Card issued by the Department of Homeland Security with the classification ‘KIC’.”.

(b) **IN GENERAL.**—Section 4 of the National Voter Registration Act of 1993 (52 U.S.C. 20503) is amended—

(1) in subsection (a), by striking “subsection (b)” and inserting “subsection (c)”; and

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following new subsection:

“(b) **REQUIRING APPLICANTS TO PRESENT DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP.**—Under any method of voter registration in a State, the State shall not accept and process an application to register to vote in an election for Federal office unless the applicant presents documentary proof of United States citizenship with the application.”.

(c) REGISTRATION WITH APPLICATION FOR MOTOR VEHICLE DRIVER'S LICENSE.—Section 5 of the National Voter Registration Act of 1993 (52 U.S.C. 20504) is amended—

(1) in subsection (a)(1), by striking “Each State motor vehicle driver’s license application” and inserting “Subject to the requirements under section 8(j), each State motor vehicle driver’s license application”;

(2) in subsection (c)(1), by striking “Each State shall include” and inserting “Subject to the requirements under section 8(j), each State shall include”;

(3) in subsection (c)(2)(B)—

(A) in clause (i), by striking “and” at the end;

(B) in clause (ii), by adding “and” at the end; and

(C) by adding at the end the following new clause:

“(iii) verify that the applicant is a citizen of the United States.”;

(4) in subsection (c)(2)(C)(i), by striking “(including citizenship)” and inserting “, including the requirement that the applicant provides documentary proof of United States citizenship”; and

(5) in subsection (c)(2)(D)(iii), by striking “; and” and inserting the following: “, other than as evidence in a criminal proceeding or immigration proceeding brought against an applicant who knowingly attempts to register to vote and knowingly makes a false declaration under penalty of perjury that the applicant meets the eligibility requirements to register to vote in an election for Federal office; and”.

(d) REQUIRING DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP WITH NATIONAL MAIL VOTER REGISTRATION FORM.—Section 6 of the National Voter Registration Act of 1993 (52 U.S.C. 20505) is amended—

(1) in subsection (a)(1)—

(A) by striking “Each State shall accept and use” and inserting “Subject to the requirements under section 8(j), each State shall accept and use”; and

(B) by striking “Federal Election Commission” and inserting “Election Assistance Commission”;

(2) in subsection (b), by adding at the end the following: “The chief State election official of a State shall take such steps as may be necessary to ensure that residents of the State are aware of the requirement to provide documentary proof of United States citizenship to register to vote in elections for Federal office in the State.”;

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking “and” at the end;

(B) in subparagraph (B) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new subparagraph:

“(C) the person did not provide documentary proof of United States citizenship when registering to vote.”; and

(4) by adding at the end the following new subsection:

“(e) ENSURING PROOF OF UNITED STATES CITIZENSHIP.—

“(1) PRESENTING PROOF OF UNITED STATES CITIZENSHIP TO ELECTION OFFICIAL.—An applicant who submits the mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a) shall not be registered to vote in an election for Federal office unless—

“(A) the applicant presents documentary proof of United States citizenship in person to the office of the appropriate election official not later than the deadline provided by State law for the receipt of a completed voter registration application for the election; or

“(B) in the case of a State which permits an individual to register to vote in an election for Federal office at a polling place on the day of the election and on any day when voting, including early voting, is permitted for the election, the applicant presents documentary proof of United States citizenship to the appropriate election official at the polling place not later than the date of the election.

“(2) NOTIFICATION OF REQUIREMENT.—Upon receiving an otherwise completed mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a), the appropriate election official shall transmit a notice to the applicant of the requirement to present documentary proof of United States citizenship under this subsection, and shall include in the notice instructions to enable the applicant to meet the requirement.

“(3) ACCESSIBILITY.—Each State shall, in consultation with the Election Assistance Commission, ensure that reasonable accommodations are made to allow

an individual with a disability who submits the mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a) to present documentary proof of United States citizenship to the appropriate election official.”

(e) REQUIREMENTS FOR VOTER REGISTRATION AGENCIES.—Section 7 of the National Voter Registration Act of 1993 (52 U.S.C. 20506) is amended—

(1) in subsection (a)—

(A) in paragraph (4)(A), by adding at the end the following new clause: “(iv) Receipt of documentary proof of United States citizenship of each applicant to register to vote in elections for Federal office in the State.”; and

(B) in paragraph (6)—

(i) in subparagraph (A)(i)(I), by striking “(including citizenship)” and inserting “, including the requirement that the applicant provides documentary proof of United States citizenship”; and

(ii) by redesignating subparagraph (B) as subparagraph (C); and

(iii) by inserting after subparagraph (A) the following new subparagraph:

“(B) ask the applicant the question, ‘Are you a citizen of the United States?’ and if the applicant answers in the affirmative require documentary proof of United States citizenship prior to providing the form under subparagraph (C);”;

and

(2) in subsection (c)(1), by inserting “who are citizens of the United States” after “for persons”.

(f) REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.—

Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. 20507) is amended—

(1) in subsection (a)—

(A) by striking “In the administration of voter registration” and inserting “Subject to the requirements of subsection (j), in the administration of voter registration”; and

(B) in paragraph (3)—

(i) in subparagraph (B), by striking “or” at the end; and

(ii) by adding at the end the following new subparagraphs:

“(D) based on documentary proof or verified information that the registrant is not a United States citizen; or

“(E) the registration otherwise fails to comply with applicable State law;”;

(2) by redesignating subsection (j) as subsection (l); and

(3) by inserting after subsection (i) the following new subsections:

“(j) ENSURING ONLY CITIZENS ARE REGISTERED TO VOTE.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act, a State may not register an individual to vote in elections for Federal office held in the State unless, at the time the individual applies to register to vote, the individual provides documentary proof of United States citizenship.

“(2) ADDITIONAL PROCESSES IN CERTAIN CASES.—

“(A) PROCESS FOR THOSE WITHOUT DOCUMENTARY PROOF.—

“(i) IN GENERAL.—Subject to any relevant guidance adopted by the Election Assistance Commission, each State shall establish a process under which an applicant who cannot provide documentary proof of United States citizenship under paragraph (1) may, if the applicant signs an attestation under penalty of perjury that the applicant is a citizen of the United States and eligible to vote in elections for Federal office, submit such other evidence to the appropriate State or local official demonstrating that the applicant is a citizen of the United States and such official shall make a determination as to whether the applicant has sufficiently established United States citizenship for purposes of registering to vote in elections for Federal office in the State.

“(ii) AFFIDAVIT REQUIREMENT.—If a State or local official makes a determination under clause (i) that an applicant has sufficiently established United States citizenship for purposes of registering to vote in elections for Federal office in the State, such determination shall be accompanied by an affidavit developed under clause (iii) signed by the official swearing or affirming the applicant sufficiently established United States citizenship for purposes of registering to vote.

“(iii) DEVELOPMENT OF AFFIDAVIT BY THE ELECTION ASSISTANCE COMMISSION.—The Election Assistance Commission shall develop a uniform affidavit for use by State and local officials under clause (ii), which shall—

“(I) include an explanation of the minimum standards required for a State or local official to register an applicant who cannot provide documentary proof of United States citizenship to vote in elections for Federal office in the State; and

“(II) require the official to explain the basis for registering such applicant to vote in such elections.

“(B) PROCESS IN CASE OF CERTAIN DISCREPANCIES IN DOCUMENTATION.—Subject to any relevant guidance adopted by the Election Assistance Commission, each State shall establish a process under which an applicant can provide such additional documentation to the appropriate election official of the State as may be necessary to establish that the applicant is a citizen of the United States in the event of a discrepancy with respect to the applicant’s documentary proof of United States citizenship.

“(3) STATE REQUIREMENTS.—Each State shall take affirmative steps on an ongoing basis to ensure that only United States citizens are registered to vote under the provisions of this Act, which shall include the establishment of a program described in paragraph (4) not later than 30 days after the date of the enactment of this subsection.

“(4) PROGRAM DESCRIBED.—A State may meet the requirements of paragraph (3) by establishing a program under which the State identifies individuals who are not United States citizens using information supplied by one or more of the following sources:

“(A) The Department of Homeland Security through the Systematic Alien Verification for Entitlements (“SAVE”) or otherwise.

“(B) The Social Security Administration through the Social Security Number Verification Service, or otherwise.

“(C) State agencies that supply State identification cards or driver’s licenses where the agency confirms the United States citizenship status of applicants.

“(D) Other sources, including databases, which provide confirmation of United States citizenship status.

“(5) AVAILABILITY OF INFORMATION.—

“(A) IN GENERAL.—At the request of a State election official (including a request related to a process established by a State under paragraph (2)(A) or (2)(B)), any head of a Federal department or agency possessing information relevant to determining the eligibility of an individual to vote in elections for Federal office shall, not later than 24 hours after receipt of such request, provide the official with such information as may be necessary to enable the official to verify that an applicant for voter registration in elections for Federal office held in the State or a registrant on the official list of eligible voters in elections for Federal office held in the State is a citizen of the United States, which shall include providing the official with such batched information as may be requested by the official.

“(B) USE OF SAVE SYSTEM.—The Secretary of Homeland Security may respond to a request received under paragraph (1) by using the system for the verification of immigration status under the applicable provisions of section 1137 of the Social Security Act (42 U.S.C. 1320b-7), as established pursuant to section 121(c) of the Immigration Reform and Control Act of 1986 (Public Law 99–603).

“(C) SHARING OF INFORMATION.—The heads of Federal departments and agencies shall share information with each other with respect to an individual who is the subject of a request received under paragraph (A) in order to enable them to respond to the request.

“(D) INVESTIGATION FOR PURPOSES OF REMOVAL.—The Secretary of Homeland Security shall conduct an investigation to determine whether to initiate removal proceedings under section 239 of the Immigration and Nationality Act (8 U.S.C. 1229) if it is determined pursuant to subparagraph (A) or (B) that an alien (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) is unlawfully registered to vote in elections for Federal office.

“(E) PROHIBITING FEES.—The head of a Federal department or agency may not charge a fee for responding to a State’s request under paragraph (A).

“(k) REMOVAL OF NONCITIZENS FROM REGISTRATION ROLLS.—A State shall remove an individual who is not a citizen of the United States from the official list of eligible voters for elections for Federal office held in the State at any time upon receipt of documentation or verified information that a registrant is not a United States citizen.”

(g) CLARIFICATION OF AUTHORITY OF STATE TO REMOVE NONCITIZENS FROM OFFICIAL LIST OF ELIGIBLE VOTERS.—

(1) IN GENERAL.—Section 8(a)(4) of the National Voter Registration Act of 1993 (52 U.S.C. 20507(a)(4)) is amended—

(A) by striking “or” at the end of subparagraph (A);

(B) by adding “or” at the end of subparagraph (B); and

(C) by adding at the end the following new subparagraph:

“(C) documentary proof or verified information that the registrant is not a United States citizen;”.

(2) CONFORMING AMENDMENT.—Section 8(c)(2)(B)(i) of such Act (52 U.S.C. 20507(c)(2)(B)(i)) is amended by striking “(4)(A)” and inserting “(4)(A) or (C)”.

(h) REQUIREMENTS WITH RESPECT TO FEDERAL MAIL VOTER REGISTRATION FORM.—

(1) CONTENTS OF MAIL VOTER REGISTRATION FORM.—Section 9(b) of such Act (52 U.S.C. 20508(b)) is amended—

(A) in paragraph (2)(A), by striking “(including citizenship)” and inserting “(including an explanation of what is required to present documentary proof of United States citizenship)”;

(B) in paragraph (3), by striking “and” at the end;

(C) in paragraph (4), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following new paragraph:

“(5) shall include a section, for use only by a State or local election official, to record the type of document the applicant presented as documentary proof of United States citizenship, including the date of issuance, the date of expiration (if any), the office which issued the document, and any unique identification number associated with the document.”.

(2) INFORMATION ON MAIL VOTER REGISTRATION FORM.—Section 9(b)(4) of such Act (52 U.S.C. 20508(b)(4)) is amended—

(A) by redesignating clauses (i) through (iii) as subparagraphs (A) through (C), respectively; and

(B) in subparagraph (C) (as so redesignated and as amended by paragraph (1)(C)), by striking “; and” and inserting the following: “, other than as evidence in a criminal proceeding or immigration proceeding brought against an applicant who attempts to register to vote and makes a false declaration under penalty of perjury that the applicant meets the eligibility requirements to register to vote in an election for Federal office; and”.

(i) PRIVATE RIGHT OF ACTION.—Section 11(b)(1) of the National Voter Registration Act of 1993 (52 U.S.C. 20510(b)(1)) is amended by striking “a violation of this Act” and inserting “a violation of this Act, including the act of an election official who registers an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship.”.

(j) CRIMINAL PENALTIES.—Section 12(2) of such Act (52 U.S.C. 20511(2)) is amended—

(1) by striking “or” at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (D); and

(3) by inserting after subparagraph (A) the following new subparagraphs:

“(B) in the case of an officer or employee of the executive branch, providing material assistance to a noncitizen in attempting to register to vote or vote in an election for Federal office;

“(C) registering an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship; or”.

(k) APPLICABILITY OF REQUIREMENTS TO CERTAIN STATES.—

(1) IN GENERAL.—Subsection (c) of section 4 of the National Voter Registration Act of 1993 (52 U.S.C. 20503), as redesignated by subsection (b), is amended by striking “This Act does not apply to a State” and inserting “Except with respect to the requirements under subsection (i) and (j) of section 8 in the case of a State described in paragraph (2), this Act does not apply to a State”.

(2) PERMITTING STATES TO ADOPT REQUIREMENTS AFTER ENACTMENT.—Section 4 of such Act (52 U.S.C. 20503) is amended by adding at the end the following new subsection:

“(d) PERMITTING STATES TO ADOPT CERTAIN REQUIREMENTS AFTER ENACTMENT.—Subsections (i) and (j) of section 8 shall not apply to a State described in subsection (c)(2) if the State, by law or regulation, adopts requirements which are identical to the requirements under such subsections not later than 60 days prior to the date of the first election for Federal office which is held in the State after the date of the enactment of the SAVE Act.”.

**SEC. 3. ELECTION ASSISTANCE COMMISSION GUIDANCE.**

Not later than 10 days after the date of the enactment of this Act, the Election Assistance Commission shall adopt and transmit to the chief State election official of each State guidance with respect to the implementation of the requirements under the National Voter Registration Act of 1993 (52 U.S.C. 20501 et seq.), as amended by section 2.

**SEC. 4. INAPPLICABILITY OF PAPERWORK REDUCTION ACT.**

Subchapter I of chapter 35 of title 44 (commonly referred to as the “Paperwork Reduction Act”) shall not apply with respect to the development or modification of voter registration materials under the National Voter Registration Act of 1993 (52 U.S.C. 20501 et seq.), as amended by section 2, including the development or modification of any voter registration application forms.

**SEC. 5. DUTY OF SECRETARY OF HOMELAND SECURITY TO NOTIFY ELECTION OFFICIALS OF NATURALIZATION.**

Upon receiving information that an individual has become a naturalized citizen of the United States, the Secretary of Homeland Security shall promptly provide notice of such information to the appropriate chief election official of the State in which such individual is domiciled.

**SEC. 6. RULE OF CONSTRUCTION REGARDING PROVISIONAL BALLOTS.**

Nothing in this Act or in any amendment made by this Act may be construed to supercede, restrict, or otherwise affect the ability of an individual to cast a provisional ballot in an election for Federal office or to have the ballot counted in the election if the individual is verified as a citizen of the United States pursuant to section 8(j) of the National Voter Registration Act of 1993 (as added by section 2(f)).

**SEC. 7. RULE OF CONSTRUCTION REGARDING EFFECT ON STATE EXEMPTIONS FROM OTHER FEDERAL LAWS.**

Nothing in this Act or in any amendment made by this Act may be construed to affect the exemption of a State from any requirement of any Federal law other than the National Voter Registration Act of 1993 (52 U.S.C. 20501 et seq.).

**SEC. 8. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act, and shall apply with respect to applications for voter registration which are submitted on or after such date.

## PURPOSE AND SUMMARY

H.R. 8281, the Safeguard American Voter Eligibility Act (“SAVE” Act), introduced by Representative Chip Roy (TX–21) with forty-six original co-sponsors, amends the National Voter Registration Act (“NVRA”) to require individuals registering to vote in a federal election, under any voter registration method, to provide their State with documentary proof of U.S. citizenship before the State can accept and process their voter application. For applicants registering without documentary proof of U.S. citizenship, State officials can cross-check the applicant’s information across federal and State databases and determine within twenty-four hours whether the applicant is a citizen. The SAVE Act also clarifies that States can remove noncitizens from their voter rolls, requires States to establish a program to remove noncitizens from their voter rolls, and gives States no-cost access to several federal and State databases to do so. It also expands the NVRA’s existing private right of action to empower citizens to bring civil suits against State election officials that fail to uphold the Act’s proof of citizenship requirement and adds criminal penalties for election officials, including executive branch officials, that register noncitizens to vote in Federal elections. Federal law makes it unlawful for noncitizens to vote in federal elections but following the Supreme Court’s decision in *Ari-*

*zona v. Inter Tribal Council of Ariz., Inc.*,<sup>1</sup> States have been prevented from asking applicants registering to vote for documentary proof of U.S. citizenship.

This has frustrated both the federal prohibition against noncitizen voting as well as State prohibitions. Combined with States refusing to clean their voter rolls under the NVRA and the over 7 million illegal aliens that have come into the U.S. under President Biden, Americans do not have confidence that federal elections are free from foreign interference. The SAVE Act requires States to ensure that only U.S. citizens are voting in federal elections.

## BACKGROUND AND NEED FOR LEGISLATION

### BACKGROUND

Article I, Section 4 of the United States Constitution<sup>2</sup> (“the Elections Clause”) explains that the States have the primary authority over election administration, the “times, places, and manner of holding elections”[.] State authority to administer elections for federal office was not a power reserved by the States, but was instead expressly delegated to them under the Constitution.<sup>3</sup> The Elections Clause also grants Congress a purely secondary role<sup>4</sup> to alter or create election laws, and regulate how federal elections are held.<sup>5</sup> As do other aspects of our federal system, this division of sovereignty continues to serve to protect one of Americans’ citizens most precious freedoms, the right to vote.

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.<sup>6</sup> To enforce those rights, federal law makes it unlawful for noncitizens to vote in federal elections.<sup>7</sup>

<sup>1</sup> 133 S.Ct. 2247 (2013).

<sup>2</sup> 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 . . .”).

<sup>3</sup> U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 804 (1995).

<sup>4</sup> 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%20The%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%2021%29.pdf>.

<sup>5</sup> *Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S.Ct. 2247, 2257 (2013).

<sup>6</sup> 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.”

<sup>7</sup> 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). Allowing non-citizens to cast ballots in American elections weakens our electoral system, directly and indirectly impacts Federal policy and funding decisions and candidate choice through the election of State and local officials, dilutes the value of citizenship, and sows distrust in our elections system; even if a State has the sovereign authority, no State should permit noncitizens 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.



Similarly, federal law prohibits foreign nationals<sup>8</sup> from contributing or donating in connection with a federal, state, or local election,<sup>9</sup> making a contribution or donation to a committee of a political party,<sup>10</sup> or making an expenditure (including an independent expenditure) or disbursement for an electioneering communication.<sup>11</sup> Although the Supreme Court of the United States has never 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, which upheld the foreign national prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates.<sup>12</sup>

Every State has used its constitutional authority to establish voter qualifications, often consisting of age, residency, and citizenship requirements.<sup>13</sup> Several States have enshrined U.S. citizenship in their State constitution as a qualification for voters to vote in State elections.<sup>14</sup> To enforce both the federal and State constitutional and statutory prohibitions on noncitizen voting, several States have enacted documentary proof of citizenship requirements when applicants register to vote.<sup>15</sup> But as explained below, following the Supreme Court’s interpretation of the National Voter Registration Act (“NVRA”) in *Arizona v. Inter Tribal Council of Ariz., Inc* (“ITCA”) as well as other lower court decisions, States have been relegated to enforcing the federal and State prohibitions on noncitizen voting by requiring applicants to sign, under penalty of perjury, that they are a citizen without being able to ask for documentary proof.

The 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.”<sup>16</sup> In conjunction with the Constitution’s voting rights amendments, Congress also found that “the right of citizens of the United States to

<sup>8</sup>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).

<sup>9</sup>52 U.S.C. § 30121(a)(1)(A).

<sup>10</sup>*Id.* at § 30121(a)(1)(B).

<sup>11</sup>*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 candidate; 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).

<sup>12</sup>*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. 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%2021%29.pdf](https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%2021%29.pdf).

<sup>13</sup>*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.”)

<sup>14</sup>*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](https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States).

<sup>15</sup>*See, e.g.* A.R.S. § 16–121.01; MS Code § 23–15–15; K.S.A. 25–2309.

<sup>16</sup>52 U.S.C. § 20501(b).

vote is a fundamental right”[.]<sup>17</sup> 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.<sup>18</sup> However, effective August 1, 1994, the NVRA exempted States from its requirements that they either had no voter-registration requirements or had election-day voter registration at polling places with respect to elections for federal office.<sup>19</sup>

#### THE NVRA AND NONCITIZENS

Although almost no States allow noncitizens to vote in their elections, over 20 States do allow noncitizens to apply for driver’s licenses.<sup>20</sup> 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 of these 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,<sup>21</sup> and Texas has had similar problems with nearly 100,000 registrations.<sup>22</sup> 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.<sup>23</sup> When Illinois implemented automatic voter registration several years ago, hundreds of noncitizens ended up on the voter rolls.<sup>24</sup> More recently, Ohio announced it was removing upwards of 100 noncitizens from their rolls<sup>25</sup>, a Georgia audit found more than 1,600 noncitizens had attempted to register to vote<sup>26</sup>, and Virginia recently removed almost 1,500 noncitizens from its rolls.<sup>27</sup> Remarkably, the Public Legal Interest Legal Foundation has found that in

<sup>17</sup> *Id.* at § 20501(a).

<sup>18</sup> *Id.* at § 20503(a).

<sup>19</sup> *Id.* § 20503(b). Those States are Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. Of these, North Dakota is the only one that does not have voter registration.

<sup>20</sup> 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>.

<sup>21</sup> 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>.

<sup>22</sup> 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/>.

<sup>23</sup> *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/>.

<sup>24</sup> 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/>.

<sup>25</sup> Anders Hagstrom, *Ohio purges ‘non-citizens’ from state voter rolls, calls on Biden admin for data ahead of 2024 election*, Fox News (May 14, 2024), <https://www.foxnews.com/politics/ohio-purges-non-citizens-state-voter-rolls-calls-biden-admin-data-ahead-2024-election>.

<sup>26</sup> *Ga. elections chief finds 1,634 noncitizen voting attempts*, 1226 (April 11, 2022), <https://www.wrdw.com/2022/04/11/watch-live-ga-elections-news-conference/>.

<sup>27</sup> *VA Records Show Non-citizens Voting*, EPEC News, available at <https://epec.info/2024/03/22/va-records-show-non-citizens-voting/>.

California, Florida, Texas, Virginia, Pennsylvania, and New Jersey, noncitizens that admitted they were not U.S. citizens were still incorrectly registered to vote.<sup>28</sup>

In addition to driver’s licenses, noncitizens are eligible for a variety of federal and State benefit programs. On the federal level, such programs include the Supplemental Nutrition Assistance Program, the Supplemental Security Income Program, Temporary Assistance for Needy Families, and Medicaid, among others.<sup>29</sup> At the State level, such programs include New York’s Safety Net Assistance, California’s CalFresh Food Assistance Program, and California’s Cash Assistance Program for Immigrants, among others.<sup>30</sup> As with driver’s licenses, when noncitizens apply for and receive government benefits, there is a possibility their names end up on the voter rolls.

Unfortunately, the risk of unlawful noncitizen voting in federal and State elections is not a myth. In the 1996 federal midterm election for California’s 46th District, the House committee charged with investigating the race found “‘clear and convincing’ evidence that 624 aliens had voted illegally in the Dornan-Sanchez election and circumstantial evidence that another 196 aliens also had done so.”<sup>31</sup> In 2011, Fairfax County, Virginia, discovered over 278 noncitizens on the voter roll and learned that 117 of them had illegally voted in Virginia elections.<sup>32</sup> Over the past decade, several different Arizona counties reported finding hundreds noncitizens on the voter rolls and determined some of them illegally voted in federal elections.<sup>33</sup> Other jurisdictions like Chicago, Illinois, San Diego County, California, and Alleghany County, Pennsylvania have all dealt with similar problems and learned that noncitizens had illegally voted.<sup>34</sup>

Today, it is more likely than ever before that noncitizens that apply for and receive federal benefits could end up on a State’s voter rolls. On March 7, 2021, President Joe Biden signed an executive order, “Executive Order on Promoting Access to Voting”<sup>35</sup> (“President Biden’s order”) that turns every federal agency into a voter registration agency<sup>36</sup> under the NVRA. Under President Biden’s order, federal agencies are required to “consider ways to expand citizens’ opportunities to register to vote and to obtain information about, and participate in, the electoral process.”<sup>37</sup> As such, the head of each federal agency is required to evaluate how the agency can promote voter registration and voter participation, including, but not limited to, providing voting information in the course of activities or services that directly engage with the public

<sup>28</sup> Testimony of J. Christian Adams, Before the U.S. House of Representatives Committee on House Administration (May 16, 2024), <https://docs.house.gov/meetings/HA/HA00/20240516/117312/HHRG-118-HA00-Wstate-AdamsJ-20240516.pdf>.

<sup>29</sup> Abigail F. Kolker, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*, CRS Report RL33809, <https://crsreports.congress.gov/product/pdf/RL/RL33809>.

<sup>30</sup> *Fact Sheet: Immigrants and Public Benefits*, National Immigration Forum, <https://immigrationforum.org/wp-content/uploads/2018/08/Immigrants-and-Public-Benefits-FINALupdate.pdf>.

<sup>31</sup> Hans von Spakovsky, J. Christian Adams, *Despite Liberals’ Hysterical Denials, Aliens Are Registering and Voting*, The Daily Signal (June 6, 2024), <https://www.dailysignal.com/2024/06/06/despite-liberals-hysterical-denial-aliens-are-registering-and-voting/>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Exec. Order No. 14019, 86 Fed. Reg 19569 (Mar. 7, 2021).

<sup>36</sup> 52 U.S.C. § 20502(5).

<sup>37</sup> Exec. Order No. 14019, 86 Fed. Reg 19569 (Mar. 7, 2021).

through agency materials, websites, online forms, social media platforms, and providing links on agency websites to State online voter registration systems. In addition, the agency head should attempt to provide access to voter registration services and vote-by-mail ballot applications in the course of activities or services that directly engage with the public, including assisting applicants in completing voter registration and vote-by-mail ballot applications, and soliciting and facilitating nonpartisan third-party organizations and State officials to provide voter registration services on agency premises. As a result, noncitizens are more likely than ever to encounter voter registration materials when they engage with a federal agency<sup>38</sup>, as recently confirmed by the Alabama Secretary of State Wes Allen.<sup>39</sup>

The NVRA allows States to remove registered individuals 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.<sup>40</sup> With the exceptions provided for in the preceding sentence, a State, within 90 days prior of a primary or general election for federal office cannot undertake a program with the purpose of *systematically* removing ineligible voters from its voter rolls.<sup>41</sup> In addition, the NVRA also imposes strict guidelines the State must follow in carrying out a program to remove voters that have moved.<sup>42</sup>

While the NVRA is premised squarely on the concept of only American citizens voting in federal elections,<sup>43</sup> 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 provisions concerning the timing of a State's removal of ineligible registrants from its voter rolls. 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.<sup>44</sup> When this program was challenged as occurring unlawfully within the NVRA's restricted 90-day timeframe, the district court held that 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.<sup>45</sup> 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 by or death of the reg-

<sup>38</sup> On November 30, 2023, the Committee on House Administration met in open session and passed H.R. 6493, the Safeguarding Electoral Integrity Act of 2023. The legislation, as amended, repeals President Biden's Executive Order on Promoting Access to Voting, and requires plans made under it to be submitted to various congressional committees.

<sup>39</sup> Wes Allen Exposes Federal Government Policy of Providing Voter Registration Forms to Non-Citizens, Alabama Secretary of State (June 5, 2024), <https://www.sos.alabama.gov/newsroom/wes-allen-exposes-federal-government-policy-providing-voter-registration-forms-non>.

<sup>40</sup> 52 U.S.C. § 20507(a)(3)–(4).

<sup>41</sup> *Id.* at § 20507(c)(2)(A).

<sup>42</sup> *Id.* at § 20507(b)–(e).

<sup>43</sup> *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.)

<sup>44</sup> *Arcia v. Florida Secretary of State*, 772 F. 3d 1335, 1339–40 (11th Cir. 2014).

<sup>45</sup> *Arcia v. Detzner*, 908 F. Supp. 2d 1276, 1282–83 (S.D. FL. 2012).

istrant, or as provided by State law by reason of criminal conviction or mental incapacity.<sup>46</sup>

#### LIMITED ACCESS TO FEDERAL DATABASES

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.<sup>47</sup> 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.”<sup>48</sup> The SAVE program allows DHS to verify an 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.”<sup>49</sup> SAVE only provides the requesting agency the information it has regarding the applicant; it does not determine the applicant’s eligibility for a specific benefit.<sup>50</sup> While the SAVE program is a potent tool, it cannot verify an applicant’s status using only a first and last name<sup>51</sup> 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.<sup>52</sup>

In June of 2012, Florida sued DHS seeking access to the SAVE database to determine whether noncitizens were registered to vote in Florida.<sup>53</sup> 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 of registrants already on the rolls.<sup>54</sup>

<sup>46</sup> *Arcia*, 772 F. 3d at 1345. While the NVRA does not define what a “systematic” plan is, the court found Florida’s 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.

<sup>47</sup> Homeland Security Act of 2002, P. Law. 107–296, 116 STAT 2135.

<sup>48</sup> 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>.

<sup>49</sup> 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>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> 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>.

<sup>53</sup> *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/>.

<sup>54</sup> *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>.

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.<sup>55</sup> However, DHS does not appear to be granting the same access to the SAVE program to every other State. Some States report long processing delays or apparently “slow-walking” of requests.<sup>56</sup> Further, the fees charged to States by DHS for use of the SAVE database have limited its use.<sup>57</sup>

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<sup>58</sup>, 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.<sup>59</sup> As such, SSA is not currently able to provide this information, even upon request.

In 1996, Congress enacted legislation that prohibited noncitizens from voting in federal elections.<sup>60</sup> Since that time, a number of local jurisdictions have permitted noncitizens to vote in their elections.<sup>61</sup> Among others, the list includes eleven jurisdictions in Maryland, three jurisdictions in Vermont, at least one jurisdiction in California, New York City, and the District of Columbia.<sup>62</sup> While successful court challenges have hobbled some efforts like in San

<sup>55</sup> 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>.

<sup>56</sup> 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.

<sup>57</sup> 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.

<sup>58</sup> 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>.

<sup>59</sup> 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>. <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/ssnhttps://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.

<sup>60</sup> 18 U.S.C. § 611; See also Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Section 217.

<sup>61</sup> Ballotpedia, *supra* note 14.

<sup>62</sup> *Id.* Recently, the San Francisco’s Board of Supervisors unanimously voted to appoint a non-citizen to San Francisco’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>.

Francisco and New York City,<sup>63</sup> other challenges have failed.<sup>64</sup> For example, the Vermont Supreme Court held that the Vermont Constitution does *not* prohibit cities from allowing noncitizens to vote in local elections.<sup>65</sup> And after the District of Columbia allowed noncitizens to vote in its elections, Congress, at the time of printing, has failed to override the law in the requisite time to prevent it from going into effect.<sup>66</sup> In May of 2024, the House of Representatives passed additional legislation to require U.S. citizenship for voters in local elections in the District of Columbia that will likely not be considered in the Senate.<sup>67</sup>

THE NVRA, THE FEDERAL FORM, AND DOCUMENTARY PROOF OF U.S. CITIZENSHIP LAWS

The NVRA requires a State’s voter registration form to include only *the minimum amount necessary* to prevent duplicate voter registrations and enable State election officials to assess the eligibility of the applicant and administer voter registration.<sup>68</sup> In conjunction with the above, the NVRA can also be interpreted to limit the ability of the States to enforce their voter eligibility requirements, such as U.S. citizenship. This is because the NVRA requires a State’s voter registration materials to include an attestation that the applicant meets each [voter eligibility] requirement; and requires the signature of the applicant, under penalty of perjury.”<sup>69</sup> This requirement, when interpreted in light of the NVRA’s minimum amount necessary language, has been read by federal courts prohibit State’s from requiring applicants to produce documentary proof of U.S. citizenship.<sup>70</sup>

One way the NVRA increased the number of eligible *citizens* who register to vote in elections for Federal office was the creation of the national mail voter registration application form (“federal form”).<sup>71</sup> The NVRA requires each State to “accept and use” the federal form for applicants that register to vote in elections for federal office.<sup>72</sup> When applicants register on the federal form, they must follow the State specific instructions for the State where they are applying to register to vote. But in order to be placed on the federal form, those instructions must first be accepted by the U.S. Election Assistance Commission (“EAC”). When some States re-

<sup>63</sup>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).

<sup>64</sup>Ballotpedia, *supra* note 14.

<sup>65</sup>*Ferry, et al. v. City of Montpelier*, 2023 VT 4.

<sup>66</sup>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.

<sup>67</sup>*See* Roll Call 232, available at <https://clerk.house.gov/Votes/2024232>.

<sup>68</sup>*Id.* at § 20504(c)(2)(B).

<sup>69</sup>*Id.* at § 20504(c)(2)(C).

<sup>70</sup>*See Fish v. Kobach*, 840 F. 3d 710 (10th Cir. 2016) (holding that Kansas’s U.S. documentary proof of citizenship requirement was preempted by the NVRA’s “minimum amount of information necessary” provision and therefore unenforceable).

<sup>71</sup>52 U.S.C. § 20505.

<sup>72</sup>*Id.* at § 20505(a). With the codification of the Help America Vote Act of 2002, the federal form went from being housed with the Federal Election Commission to the Election Assistance Commission. *See Id.* at § 20508.

quested that the EAC include their documentary proof of citizenship requirement as part of their state-specific instructions, the EAC refused, and the litigation described below ensued. Today, the federal form only requires applicants to swear or affirm under penalty of perjury that they are a U.S. citizen.<sup>73</sup>

In 2004, Arizona voters adopted Proposition 200 that required voters to present proof of citizenship when they register to vote.<sup>74</sup> To prove their U.S. citizenship, applicants could present a photocopy of their passport or birth certificate, a driver's license number, if the license states that the issuing authority verified the applicant's U.S. citizenship, evidence of naturalization, tribal identification, or other methods pursuant to the Immigration Reform and Control Act of 1986.<sup>75</sup> But the EAC *refused* to include Arizona's documentary proof of citizenship requirement on the State specific instructions Arizona asked for on the federal form.<sup>76</sup> In response, Arizona enacted a statute that required State officials to reject an applicant's federal form without documentary proof of citizenship.<sup>77</sup>

In *ITCA*, the Supreme Court ("Court") held that the NVRA's command that States "accept and use" the federal form preempted Arizona's requirement that State officials reject an applicant's federal form without documentary proof of citizenship.<sup>78</sup> By interpreting solely the plain statutory text of the NVRA without reaching the constitutional question, the Court declined to determine to whether the NVRA's "accept and use" requirement was constitutional if it prevented a State from enforcing its constitutionally sound voter qualifications. As a result, Arizona, and every other State with a documentary proof of citizenship requirement have been required to accept the registration of applicants that used the federal form and allow them to vote in federal elections, any state law to the contrary notwithstanding.

The Court rejected Arizona's textual argument that the NVRA did not prohibit States from asking applicants for additional information before registering them to vote. It reasoned that while the NVRA requires States to accept a completed federal form, States remain constitutionally competent to create their own voter registration forms for state elections, including those that may require information not contemplated by the federal form, and that the federal form's purpose was to serve as a backstop to ensure one method of registering to vote in federal elections was always available.<sup>79</sup> As such, the Court determined that the plain meaning of the NVRA's text required States to register to vote for federal elections all eligible applicants who complete the federal form.

But the Court was concerned that the plain meaning of the NVRA might prevent Arizona from getting the information it needs to enforce its citizenship requirement. It recognized it would raise constitutional concerns if a federal statute prohibited States from getting the information they needed to enforce their qualifica-

<sup>73</sup> National Mail Voter Registration Form, U.S. Election Assistance Commission (Dec. 29, 2023), <https://www.eac.gov/voters/national-mail-voter-registration-form>; *see also* 52 U.S.C. § 20508(b)(2).

<sup>74</sup> *Inter Tribal Council*, 133 S.Ct. 2252 (2013).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 2254.

<sup>78</sup> *Id.* at 2260.

<sup>79</sup> *Id.* at 2254–56.



tions.<sup>80</sup> In response to this problem, the United States argued the NVRA could be read to require the EAC to place State specific instructions if the information is necessary for a State to assess the eligibility of an applicant.<sup>81</sup> The Court avoided the constitutional question by invoking the constitutional avoidance canon<sup>82</sup> and suggested that Arizona ask the EAC again to place its documentary proof of citizenship requirement on the federal form with the alternative that if the EAC refused, Arizona could sue the EAC for violating the Administrative Procedure Act (“APA”).<sup>83</sup>

Following the Supreme Court’s decision in *ITCA* several States requested the EAC include their documentary proof of citizenship requirement on the federal form. But the EAC *rejected* these requests, reasoning that providing documentary proof of citizenship would require applicants to “submit more information that is *necessary* to enable election officials to assess eligibility.”<sup>84</sup> The EAC reasoned that the sworn statement on the federal form is relied on by most jurisdictions in the United States to enforce their citizenship requirement, and there are hefty fines and penalties associated with applicants that lie about their citizenship.<sup>85</sup>

In response to the EAC’s rejection of including a documentary proof of citizenship requirement on the federal form, Arizona and Kansas sued the EAC for violating the APA, as the Supreme Court had suggested in *ITCA*.<sup>86</sup> The District Court held that the EAC acted unlawfully by not including the documentary proof of citizenship requirement because the States have the authority to determine how to enforce their voter qualifications, imposing a nondiscretionary duty on the EAC to update the form, and that the NVRA did not preempt State laws requiring proof of citizenship.<sup>87</sup> But the United States Court of Appeals for the Tenth Circuit reversed, holding that the EAC’s duty was discretionary, and that the States must prove that the federal form does not provide the information they need to enforce its voter qualifications, which Arizona and Kansas had not shown.<sup>88</sup> When Arizona and Kansas appealed the ruling to the Supreme Court, it chose not to hear the case.<sup>89</sup>

In January of 2016, the EAC’s new executive director approved the requests of Georgia, Kansas, and Alabama to include their doc-

<sup>80</sup> *Inter Tribal Council*, 133 S.Ct. at 2258–59.

<sup>81</sup> *Id.* at 2259. Because the EAC had already rejected Arizona’s request to have the documentary proof of citizenship requirement on the federal form, this argument makes little sense.

<sup>82</sup> Under this canon of statutory interpretation, “if a statute has two possible meanings, one of which violates the Constitution, courts should adopt the meaning that does not do so.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2593 (2012) (opinion of Roberts, C.J.).

<sup>83</sup> *Inter Tribal Council*, 133 S.Ct. at 2259–60. Both dissents pointed out that asking the EAC a second time made little sense, especially in light of the fact that the EAC had no commissioners to review and accept or deny a State’s request at the time the opinion was issued. *See Id.* at 2270 (Thomas, J., dissenting) and *Id.* at 2273 (Alito, J., dissenting).

<sup>84</sup> Memorandum of Decision Concerning State Requests To Include Additional Proof-Of-Citizenship Instructions On The National Mail Voter Registration Form at 28–30, U.S. Election Assistance Commission (Jan. 17, 2014), available at <https://www.brennancenter.org/sites/default/files/legal-work/129-1%20Memorandum%20of%20Decision.pdf>. (emphasis added); *see also* *Fish v. Kobach*, 840 F. 3d 710 (10th Cir. 2016) (the Tenth Circuit made the same arguments in finding that the NVRA preempted Kansas’s U.S. documentary proof of citizenship requirement).

<sup>85</sup> *Id.*

<sup>86</sup> *Inter Tribal Council*, 133 S.Ct. at 2259–60.

<sup>87</sup> *Kobach v. U.S. Election Assistance Com’n*, 6 F. Supp. 3d, 1252, 1271–72 (D. Kansas 2014). The court ordered the EAC to include Arizona and Kansas’ documentary proof of citizenship requirement on the federal form.

<sup>88</sup> *Kobach v. U.S. Election Assistance Comm’n*, 772 F. 3d 1183, 1195–96 (10th Cir. 2014).

<sup>89</sup> 576 U.S. 1055 (2015).

umentary proof of citizenship requirement on the federal form.<sup>90</sup> But the United States Court of Appeals for the D.C. Circuit found that decision to be unlawful because the director accepted the States' request on the belief that it was within the States' competence to determine what should be on the form and no independent review was required.<sup>91</sup> Like the Tenth Circuit, the D.C. Circuit determined that the NVRA required States to prove that the documentary proof of citizenship requirement is necessary to enforce its voter qualifications.<sup>92</sup> The dissent argued that reading raised serious constitutional questions because the federal government cannot upend State authority to determine the eligibility of its voters, and the cleanest interpretation of the NVRA should impose a nondiscretionary duty on the EAC to grant the States' request.<sup>93</sup>

In 2022, Arizona enacted a new U.S. documentary proof of citizenship law for applicants registering to vote in federal elections. Since the Court's decision in *ITCA*, Arizona has required those registering to vote in State or local elections to comply with this requirement, but not federal elections. In early March of 2024, a federal district court held that Arizona's requirement did not violate the NVRA or impose an undue burden on the right to vote.<sup>94</sup>

#### THE BIDEN ADMINISTRATION'S REFUSAL TO ENFORCE THE IMMIGRATION LAWS

Since President Biden assumed office on January 20, 2021, he has, on more than 60 occasions, taken actions that have "manipulated the federal bureaucracy to open our borders to illegal immigrants, human trafficking, fentanyl, and potential terrorists."<sup>95</sup> Among those actions were halting emergency construction of a wall on the southern border, instating lax deportation and immigration enforcement policies, terminating the Migrant Protection Protocols (commonly known as Remain in Mexico), reinstating catch-and-release, expanding asylum eligibility, among many other actions.<sup>96</sup> As a result of these policies, as of February 2024, over 7 million illegal immigrants had come across the southern border, a number greater than the population of 36 States.<sup>97</sup> This number does not include the roughly 1.8 million known "gotaways" who evaded law enforcement.<sup>98</sup>

Republicans across the U.S. have taken several actions to stop the Biden Administration's lawlessness at the border. First, Texas and several other States have sued the Biden Administration, arguing that several of the policies stated above violate the immigration laws. But in *Biden v. Texas*, the Supreme Court held the Biden Administration's rescission of the Migrant Protection Protocols did

<sup>90</sup> League of Women Voters of US v. Newby, 838 F. 3d 1, 6 (D.C. Cir. 2016).

<sup>91</sup> *Id.* at 9–10.

<sup>92</sup> *Id.* at 10–11.

<sup>93</sup> *Id.* at 15–16 (Randolph, J., dissenting).

<sup>94</sup> *Mi Familia Vota v. Fontes*, No. CV–22–00509–PHX–SRB (D. A.Z. Feb. 29, 2024).

<sup>95</sup> 64 Times the Biden Administration Intentionally Undermined Border Security, Speaker Mike Johnson (Jan. 9, 2024), <https://www.speaker.gov/64-times-the-biden-administration-intentionally-undermined-border-security/>.

<sup>96</sup> *Id.*

<sup>97</sup> Chris Pandolfo, 7.2M illegals entered the US under Biden admin, an amount greater than population of 36 states, Fox News (Feb. 20, 2024), <https://www.foxnews.com/politics/illegal-immigrants-biden-admin-amount-greater-population-36-states>.

<sup>98</sup> *Id.*

not violate the Immigration and Nationality Act.<sup>99</sup> A year later, the Supreme Court held that Texas and Louisiana did not have standing to challenge the Biden Administration’s lax deportation and immigration enforcement policies.<sup>100</sup>

In the November 2022 federal midterm elections, Republicans took back the House of Representatives (“House”), campaigning in part on securing the southern border.<sup>101</sup> In May of 2023, the House of Representatives passed H.R. 2, the Secure the Border Act of 2023.<sup>102</sup> Among other things, the bill would require completion of the wall on the southern border, authorizes funds to hire more border patrol agents, prohibits federal funds from being used to fund President Biden’s parole rule, criminalizes visa overstays, stops non-governmental organizations from using tax dollars to transport illegal aliens, requires employers to use E-Verify, and makes changes to the asylum process. However, the bill has little to no chance of being taken up or passed through the Democrat controlled Senate. In addition, the Biden Administration issued a Statement of Administration Policy providing that President Biden would veto the legislation.<sup>103</sup> Additionally, in February of 2024, the House of Representatives impeached DHS Secretary Alejandro Mayorkas for refusing to comply and enforce the immigration laws, and for breaching the public trust by making false statements and knowingly obstructing lawful oversight of DHS.<sup>104</sup> Both H.R. 2 and the impeachment of Secretary Mayorkas passed the House with no Democrat support.<sup>105</sup> Unfortunately, the Democrat controlled Senate voted on a party-line vote to dismiss both articles of impeachment, without a trial.<sup>106</sup>

As the number of crossings at the U.S. southern border has spiraled out of control, Speaker Mike Johnson has implored President Biden to take executive action to secure the southern border.<sup>107</sup> Six months following Speaker Johnson’s request in which media reports suggested President Biden went back<sup>108</sup> and forth<sup>109</sup> on the

<sup>99</sup> 597 U.S. 785 (2022).

<sup>100</sup> 599 U.S. 670 (2023).

<sup>101</sup> Secure the Border and Combat Illegal Immigration, Leader Kevin McCarthy’s Commitment to America, available at <https://www.speaker.gov/commitment/safe-communities/>; see also Suzanne Monyak, *GOP candidates focus on border security amid high migration*, Roll Call (Nov. 2, 2022), <https://rollcall.com/2022/11/02/gop-candidates-focus-on-border-security-amid-high-migration/>.

<sup>102</sup> Secure the Border Act of 2023, H.R. 2, 118th Cong. § 1 (2023).

<sup>103</sup> Statement of Administration Policy H.R. 2—Secure the Border Act of 2023, Executive Office of the President (May 8, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/SAP-H.R.-2.pdf>.

<sup>104</sup> Impeaching Alejandro Nicholas Mayorkas, Secretary of Homeland Security, for high crimes and misdemeanors, H. Res. 863, 118th Cong. § 2 (2024).

<sup>105</sup> See Roll Call 209, available at <https://clerk.house.gov/Votes/2023209>; See Roll Call 43, available at <https://clerk.house.gov/Votes/202443>.

<sup>106</sup> Mary Clare Jalonick, Farnoush Amiri, *Senate rejects impeachment articles against Mayorkas, ending trial against Cabinet secretary*, Associated Press (April 17, 2024), <https://apnews.com/article/mayorkas-senate-impeachment-trial-democrats-29aa775c0e866f4160f320583f261a72>.

<sup>107</sup> Speaker Johnson Sends Letter to President Biden Urging Immediate Executive Action on the Southern Border, Speaker Mike Johnson (Dec. 21, 2023), <https://www.speaker.gov/speaker-johnson-sends-letter-to-president-biden-urging-immediate-executive-action-on-the-southern-border/>.

<sup>108</sup> Julia Ainsley, Monica Alba, *The Biden administration is considering executive action to deter illegal migration at the southern border*, NBC News (Feb. 7, 2024), <https://www.nbcnews.com/politics/immigration/biden-administration-weighs-executive-action-border-migrants-rcn-a137804>.

<sup>109</sup> Louis Casiano, *Biden says he won’t take executive action to secure border, wants Congress to find a fix*, Fox News (Mar. 11, 2024), <https://www.foxnews.com/politics/biden-wont-take-executive-action-secure-border-wants-congress-find-fix>.

issue, he finally announced new actions to attempt to secure the border.<sup>110</sup> Among other things, the order, with some exceptions, would suspend and limit entries into the U.S. if Customs and Border Patrol has made 2,500 or more encounters per day over a seven-day period.<sup>111</sup> Remarkably, encounters were last below 2,500 in January of 2021 when President Biden first took office and under the new order, the border would remain open with 17,000 encounters in a week, 68,000 in a month, or over 800,000 in a year.<sup>112</sup>

As a result, there is an explosion of illegal immigrants in the U.S. that might be eligible for different federal and State benefits with the chance that they are improperly placed on a State's voter roll.

#### NEED FOR LEGISLATION

Representative Roy's (TX-22) Safeguard American Voter Eligibility Act ("SAVE" Act) would require individuals registering to vote in a federal election, under any voter registration method, to provide their State with documentary proof of U.S. citizenship before the State can accept and process their voter application. For applicants registering without documentary proof of U.S. citizenship, State officials can cross-check the applicant's information across federal and State databases and determine whether the applicant is a citizen within twenty-four hours. The SAVE Act also clarifies that States can remove noncitizens from their voter rolls, requires States to establish a program to remove noncitizens from their voter rolls, and gives States no-cost access to federal and State databases where citizenship information is housed to do so. It also expands the NVRA's existing private right of action to empower citizens to bring civil suits against State election officials that fail to uphold the act's proof of citizenship requirement and adds criminal penalties for election officials that register noncitizens to vote in Federal elections, including executive branch employees that materially assist noncitizens registering to vote. Federal law makes it unlawful for noncitizens to vote in federal elections but following the Supreme Court's decision in *ITCA*,<sup>113</sup> States have been prevented from asking applicants registering to vote for documentary proof of U.S. citizenship. This has frustrated both the federal prohibition and State prohibitions on noncitizen voting.

While the NVRA had an admirable goal of getting U.S. citizens registered to vote, the real-world effects of it have prevented States from requiring documentary proof of U.S. citizenship of applicants registering to vote. The NVRA poses other problems such as not allowing States to remove noncitizens from their voter rolls,<sup>114</sup> and not giving States access to federal or State databases that can help them ensure their voter rolls only consist of eligible voters. To

<sup>110</sup> FACT SHEET: President Biden Announces New Actions to Secure the Border, The White House (June 4, 2024), <https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/04/fact-sheet-president-biden-announces-new-actions-to-secure-the-border/>.

<sup>111</sup> Seung Min Kim et al., *Biden rolls out asylum restrictions, months in the making, to help 'gain control' of the border*, Associated Press (June 5, 2024), <https://apnews.com/article/biden-asylum-migration-immigration-mexico-border-dec5f83b468b5795479bf1f5e49799d5>.

<sup>112</sup> *Id.*

<sup>113</sup> 133 S.Ct. 2247 (2013).

<sup>114</sup> *But see* *Arcia v. Florida Secretary of State*, 772 F. 3d 1335 (11th Cir. 2014) (holding that States can remove noncitizens from their rolls even though the text of the NVRA does not allow it).

make matters worse, the NVRA requires States to provide voter registration materials to anyone that applies for a driver's license. But with so many States allowing noncitizens to receive driver's licenses and other benefits, there is a possibility that noncitizens mistakenly end up on the voter rolls. And because the NVRA does not bifurcate between citizens and noncitizens receiving voter registration materials, some States do not take the time to check whether they have given a voter registration application to a non-citizen. As a result of all this, backward NVRA jurisprudence has prevented States from ensuring that only U.S. citizens are registered to vote.

Since President Biden assumed office, there has been an influx of illegal immigrants that have entered the U.S. by way of our open southern border. These illegal immigrants, along with many millions of existing noncitizens in the U.S. are eligible for different federal and State benefits. Because the NVRA ensures that anyone that signs up for a driver's license receives voter registration forms, it is plausible that noncitizens have inadvertently been given these forms and might be registered to vote in several States. Moreover, under President Biden's Executive Order on Promoting Access to Voting, federal agencies are required to provide voter registration materials to individuals they interact with. And to make matters worse, as some jurisdictions have allowed noncitizens to vote, those noncitizens are lawfully on the voter rolls of several States. As a result of all this, combined with States being unable to check for proof of U.S. citizenship when they register voters, it is truly unknown how many noncitizens are on the voter rolls and might have the opportunity to vote in federal elections.

As described above, federal law, and many State laws prohibit noncitizens from voting. However, following the Supreme Court's decision in *ITCA* and the decisions of other federal courts, States have been prohibited from requiring applicants registering to vote to provide documentary proof of U.S. citizenship. This has frustrated the ability of both federal and State governments to enforce their noncitizen voting prohibitions. The SAVE Act fixes this problem and requires States to only accept and process a voter application if it contains documentary proof of U.S. citizenship. By requiring States to enforce the federal and State nonvoting prohibitions on the front end, it will quell any fears of noncitizen voting in elections as the election results are being tabulated and finalized. It will also give confidence to voters that only U.S. citizens are voting in their elections, which will increase confidence in the election results.

For U.S. citizens that do not have documentary proof of U.S. citizenship, States are given cost-free access to federal and State databases to check the applicant's information to determine whether they are a U.S. citizen. This information will be made available to the State within 24 hours to ensure that the applicant has enough time to register to vote and vote or possibly cast a provisional ballot in States that allow voters to provisionally vote. In addition, the SAVE Act tasks the Election Assistance Commission ("EAC") with providing States guidance as to other processes a State can establish in which an applicant can provide proof of U.S. citizenship. That process requires the applicant to sign an attestation, under penalty of perjury, that he or she is a U.S. citizen and

eligible to vote in federal elections, and the State official that makes the determination that the applicant is a U.S. citizen and eligible to vote in federal elections must provide an affidavit, signed by the official swearing or affirming that the applicant has sufficiently established U.S. citizenship for the purpose of registering to vote. The EAC is also tasked with developing a uniform affidavit for use by State officials that make the determination that an applicant is a citizen of the U.S. in the event they do not have the documentary proof of U.S. citizenship required by the SAVE Act. While these steps seem stringent, it is important that the State official registering an applicant to vote is absolutely certain that the applicant is a U.S. citizen. This arduous process will ensure that only citizens are registered to vote in federal elections. Similarly, the EAC is tasked with providing States guidance for applicants that have had a name change and their current documentation no longer matches their passport or birth certificate.

In the event a State or State official is suspected of registering applicants to vote that do not provide documentary proof of U.S. citizenship, the SAVE Act expands on the NVRA's existing private right of action to allow citizens to hold these officials accountable. The private right of action is an important tool that allows citizens to enforce both the federal and State prohibitions on noncitizen voting. Additionally, it will ensure that State officials think twice before registering applicants without documentary proof of U.S. citizenship out of fear of litigation. Out of concerns that President Biden's Executive Order on Promoting Access to Voting is being misinterpreted by executive branch officials, the legislation additionally prohibits executive branch employees from materially assisting noncitizens registering to vote. To ensure strict compliance with the legislation, the SAVE Act adds criminal penalties for election officials that knowingly register an applicant to vote in federal elections without documentary proof of U.S. citizenship. These penalties can range from a fine to up to 5 years in prison, or both.

The SAVE Act also clarifies that States can remove noncitizens from their voter rolls. In so doing, it requires States to establish a program to remove noncitizens from their voter rolls within 30 days of the legislation's enactment. With the combination of States allowing noncitizens to receive driver's licenses and other benefits, which increases their chances of ending up on the voter rolls, and States being prohibited from asking applicants for documentary proof of U.S. citizenship, there is a strong possibility that noncitizens are on the voter rolls of almost every State. As such, States are required to establish a plan to remove noncitizens from their voter rolls. The legislation gives States no-cost access to federal databases housed in DHS, SSA, and other federal and State databases with citizenship information to get the information necessary to determine if noncitizens are on their voter rolls. Today, States are sometimes given access to DHS's SAVE database to help clean their voter rolls, but access to it is costly, and the Biden Administration has not been as willing as the Trump Administration to allow States to utilize it. This legislation rectifies that problem and gives States no-cost access to federal databases so they can clean their voter rolls.

In the United States, almost every State has established a process for voters to vote provisionally in the event they have not com-

plied with their State’s voting requirements.<sup>115</sup> The SAVE Act respects each State’s provisional voting laws so long as the voter is a citizen of the United States. The SAVE Act also requires the Department of Homeland Security to notify each State’s Chief Election Officer (usually the Secretary of State) when a noncitizen that lives in the State becomes a citizen of the United States. This additional information will help States verify the citizenship status of voters that might be on the rolls or might be attempting to register to vote based on their new status. Moreover, as the NVRA exempted two categories of States from its requirements, this legislation maintains the exemption for States that do not have a process for voter registration and for the other category of States so long as the State adopts the SAVE Act’s core provisions within 60 days before the next federal election.

The SAVE Act is also designed to be implemented immediately upon enactment. While the EAC is required to provide States guidance on several different parts of the legislation, the EAC is required to provide this guidance within 10 days of enactment. Similarly, the legislation removes any paperwork reduction act requirements that executive branch agencies might hide behind to prevent the legislation from being implemented and enforced.

With a presidential election just six months away, the SAVE Act requires States to take affirmative steps to ensure noncitizens are not registering to vote in federal elections and are not on the voter rolls. The SAVE Act will inspire Americans’ confidence in our elections by requiring States to take concrete steps to ensure that only citizens of the United States are voting in American elections.

## COMMITTEE ACTION

### INTRODUCTION AND REFERRAL

On May 7, 2024, Representative Chip Roy (TX–21) with forty-six original co-sponsors introduced H.R. 8281, the Safeguard American Voter Eligibility Act. The bill was referred to the U.S. House of Representatives Committee on House Administration.

### HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee held one full committee hearing to develop H.R. 8281.

1. On May 16, 2024, the Committee held a full committee hearing titled, “American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference.” The hearing highlighted the dangers associated with noncitizen voting, how States do not have the tools nor resources to clean their voter rolls, and what steps Congress can take to rectify these problems. It also touched on the loopholes in the federal campaign finance system that allow foreign nationals to spend money in U.S. elections and how Congress can close those loopholes. Witnesses included the Honorable Cord Byrd, Florida Secretary of State, the Honorable Hans A. von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fel-

<sup>115</sup>State by State Provisional Ballot Laws, Ballotpedia, available at [https://ballotpedia.org/State\\_by\\_State\\_Provisional\\_Ballot\\_Laws](https://ballotpedia.org/State_by_State_Provisional_Ballot_Laws).

low, the Heritage Foundation, the Honorable J. Christian Adams, President and Chief Executive Officer of the Public Interest Legal Foundation, Caitlin Sutherland, Executive Director of Americans for Public Trust, and Michael Waldman, President and Chief Executive Officer of the Brennan Center for Justice.<sup>116</sup>

#### COMMITTEE CONSIDERATION

On May 23, 2024, the U.S. House Committee on House Administration met in open session and ordered the bill, H.R. 8281, Safeguard American Voter Eligibility Act ANS as amended, reported favorably to the House of Representatives, by a record vote of six to one, a quorum being present.

#### COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following votes occurred during the Committee's consideration of H.R. 8281:

1. Vote on an amendment to H.R. 8281, offered by Mr. Morelle, failed by a record vote of 6 noes and 1 aye. Noes: Steil, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A., Lee, L. Aye: Morelle, J.

2. Vote to adopt an amendment to H.R. 8281, offered by Mrs. Lee, passed by a record vote of 6 ayes and 1 no. Ayes: Steil, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A., Lee, L. No: Morelle, J.

3. Vote to adopt H.R. 8281 ANS, as amended, passed by a record vote of 6 ayes and 1 no. Ayes: Steil, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A., Lee, L. No: Morelle, J.

4. Vote to report H.R. 8281 ANS, as amended, to the House of Representatives, passed by a record vote of 6 ayes and 1 no. Ayes: Steil, B., Griffith, M., Bice, S., Carey, M., D'Esposito, A., Lee, L. No: Morelle, J.

#### 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 additional costs attributable to H.R. 8281. The legislation gives States cost free access to federal databases housed in the Department of Homeland Security, the Social Security Administration, and other federal and State databases where citizenship information might be stored. For States to clean their voter rolls on an on-

<sup>116</sup>*American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference: Hearing Before the H. Comm. On Admin., 118th Cong. (2024).*



going basis and, in some cases, determine whether an applicant registering to vote is a U.S. citizen, they will need to frequently access these databases.

#### 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. 8281 are to require individuals registering to vote in a federal election, under any voter registration method, to provide their State with documentary proof of U.S. citizenship before the State can accept and process their voter application; but for applicants registering without documentary proof of U.S. citizenship, State officials can cross-check the applicant's information across federal and State databases and determine whether the applicant is a citizen within twenty-four hours. The legislation also clarifies that States can remove noncitizens from their voter rolls, requires States to establish a program to remove noncitizens from their voter rolls, and gives States no-cost access to several federal and State databases to do so. It also expands the NVRA's existing private right of action to empower citizens to bring civil suits against State election officials that fail to uphold the act's proof of citizenship requirement and adds criminal penalties for election officials, including executive branch officials, that register noncitizens to vote in Federal elections. Finally, the legislation tasks the Election Assistance Commission with providing guidance to States to help implement some of the legislation's requirements.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 8281 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. 8281 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. The legislation

contains several unfunded mandates. First, it imposes a federal documentary proof of U.S. citizenship requirement on individuals registering to vote in a federal election that States, registering individuals to vote, will need to comply with. Second, the legislation requires States to establish a program where they identify noncitizens by using federal and State databases in order to remove them from their voter rolls. While the legislation does give States no-cost access to these databases, there are no funds provided to help States carry out this process or inform registered voters they have been removed from the rolls. Finally, the legislation tasks the Election Assistance Commission with developing guidance that States must implement for individuals with a disability and general guidance that States might choose to implement to comply with Section 2 of this legislation generally.

#### ADVISORY COMMITTEE STATEMENT

H.R. 8281 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*

The section provides the short title of the bill, the “Safeguard American Voter Eligibility (“SAVE Act”).

##### *Section 2. Ensuring only citizens are registered to vote in elections for federal office*

Section 2(b)(1)–(5) defines Documentary Proof of Citizenship (“DPOC”) and gives the methods that will qualify including: (1) REAL ID if it indicates the applicant is a citizen, (2) U.S. passport, (3) applicant’s official U.S. military ID card with U.S. military record of service showing the applicant was born in the US., (4) valid government-issued photo ID showing the applicant was born in the U.S., or (5) valid government-issued photo ID (that does not provide proof of citizenship) in conjunction with Section 2 (b)(5)(A):

- (A) certified birth certificate;
- (B) extract from a U.S. hospital Record of Birth created when the applicant was born that indicate the applicant was born in the U.S.;
- (C) final adoption decree showing the applicant’s name and that the applicant’s place of birth was in the U.S.;
- (D) A Consular Report of Birth Abroad of a citizen of the U.S. or a certification of the applicant’s Report of Birth of a U.S. citizen issued by the Secretary of State;
- (E) Naturalization Certificate issued by the Department of Homeland Security; or
- (F) An American Indian Card issued by the Department of Homeland Security

- If an applicant does not provide the above documentation, they cannot register to vote. This includes by mail (on the federal form) or in person at the DMV or at a voter registration center.

Section 2(b) also mandates all States to require DPOC under any method the State accepts for registering to vote for federal elections.

Section 2(c) requires that individuals registering to vote in federal elections while receiving a State's Motor Vehicle license must show DPOC that conforms with section 2 (b)(1 5).

Section 2(d)(2) requires the chief election official of each State to take necessary steps to make sure the public is aware of the new DPOC requirements.

Section 2(e)(a)(A) requires applicants who use the federal mail voter registration form to register to vote to show DPOC to the appropriate State election official in person in order for the State to register the individual to vote.

Section 2(e)(3) requires each state to work with the Election Assistance Commission to ensure individuals with a disability who submit a mail-in voter registration application are accommodated to present DPOC to the appropriate election official.

Section 2(f)(3) requires a State or local official to sign an affidavit affirming or swearing that the individual without DPOC has provided evidence to establish themselves as a U.S. citizen for the purpose of registering to vote in federal elections.

- The EAC is tasked with developing this affidavit that includes:
  - An explanation of the minimum standards required for a State officials to register an applicant who cannot provide DPOC;
  - A requirement that the State official must explain the basis for registering such applicant to vote in such elections.

Section 2(f)(3) requires each state to establish a process under which an applicant who has discrepancies with their DPOC can provide clarifying additional documents to explain such discrepancies.

Section 2(f)(3) & Section 2(f)(4)(A)(B)(C)(D) requires States to take steps to ensure only U.S. citizens are registered to vote and to establish a program within 30 days after the bill's enactment to accomplish this goal.

- States can rely on the Department of Homeland Security's SAVE database, the Social Security Administration, State agencies that supply State ID's or driver's licenses, or other sources, including databases that provide U.S. citizenship.
- In conjunction with the above, federal agencies are required to respond to State requests within 24 hours of the request.
- Agencies cannot charge States a fee for the information or for database access.

Section 2(f)(3) also requires the Secretary of Homeland Security to conduct an investigation to determine whether to initiate the removal process of non-citizens, who were unlawfully registered to vote, under the Immigration and Nationality Act.

Section 2(f)(3) also requires States to remove voters from their rolls if they are given information providing that a registered voter is not a citizen of the United States.

Section 2(g) clarifies that the National Voter Registration Act (“NVRA”) allows States to remove noncitizens from their voter rolls.

Section 2(h) amends the national mail voter registration form to include a section requiring a State or local election official to record the type of document the applicant presented as documentary proof of U.S. citizenship, including the date of issuance, the date of expiration (if any), the office which issued the document, and any unique identification number associated with the document.

Section 2(i) expands the NVRA’s existing private right of action, to include claims against election officials that register applicants to vote without documentary proof of U.S. citizenship.

Section 2(j) also adds a criminal penalty to the NVRA against those who register applicants who do not provide documentary proof of citizenship. It also makes it a crime for an officer or employee of the executive branch to provide material assistance to a noncitizen attempting to register to vote in a federal election.

- Penalties include fines and or imprisonment not to exceed 5 years.

Section 2(k) provides that this legislation and the NVRA will continue to not apply to States that do not have voter registration. However, this legislation, in addition to the NVRA’s public records requirements, will apply in States that are NVRA exempt unless the State adopts this legislation’s core provisions not later than 60 days before an election for federal office.

### *Section 3. Election Assistance Commission guidance*

Requires the Election Assistance Commission to adopt and transmit guidance to each State’s Chief Election Official to implement the bill’s requirements in section 2. This must be done within 10 days after the bill’s enactment.

### *Section 4. Inapplicability of Paperwork Reduction Act*

The Paperwork Reduction Act will not apply to the development or modifications of voter registration material provided in this bill.

### *Section 5. Duty of Secretary of Homeland Security to notify election officials of naturalization*

Requires Secretary of Homeland Security to provide notice to the State’s Chief Election Officer (usually the Secretary of State) when a noncitizen that lives in the State becomes a citizen of the United States.

### *Section 6. Rule of construction regarding provisional ballots*

Rule of construction keeping the provisional ballot laws of every State in place with the caveat that the applicant must provide (or the State when it gets the information) proof of citizenship for their vote to be counted.

*Section 7. Rule of construction regarding effect on state exemptions from other federal laws*

Rule of construction providing that this legislation should not be construed to unexempt States from other exemptions it has under federal law.

*Section 8. Effective date*

The legislation becomes effective on the date of enactment.

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. 3. DEFINITIONS.**

**[As used]** (a) *IN GENERAL.*—As used in this Act—

(1) the term “election” has the meaning stated in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1));

(2) the term “Federal office” has the meaning stated in section 301(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(3));

(3) the term “motor vehicle driver’s license” includes any personal identification document issued by a State motor vehicle authority;

(4) the term “State” means a State of the United States and the District of Columbia; and

(5) the term “voter registration agency” means an office designated under section 7(a)(1) to perform voter registration activities.

(b) *DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP.*—As used in this Act, the term “documentary proof of United States citizenship” means, with respect to an applicant for voter registration, any of the following:

(1) A form of identification issued consistent with the requirements of the REAL ID Act of 2005 that indicates the applicant is a citizen of the United States.

(2) A valid United States passport.

(3) The applicant’s official United States military identification card, together with a United States military record of service showing that the applicant’s place of birth was in the United States.

(4) A valid government-issued photo identification card issued by a Federal, State or Tribal government showing that the applicant’s place of birth was in the United States.

(5) A valid government-issued photo identification card issued by a Federal, State or Tribal government other than an

identification described in paragraphs (1) through (4), but only if presented together with one or more of the following:

(A) A certified birth certificate issued by a State, a unit of local government in a State, or a Tribal government which—

(i) was issued by the State, unit of local government, or Tribal government in which the applicant was born;

(ii) was filed with the office responsible for keeping vital records in the State;

(iii) includes the full name, date of birth, and place of birth of the applicant;

(iv) lists the full names of one or both of the parents of the applicant;

(v) has the signature of an individual who is authorized to sign birth certificates on behalf of the State, unit of local government, or Tribal government in which the applicant was born;

(vi) includes the date that the certificate was filed with the office responsible for keeping vital records in the State; and

(vii) has the seal of the State, unit of local government, or Tribal government that issued the birth certificate.

(B) An extract from a United States hospital Record of Birth created at the time of the applicant's birth which indicates that the applicant's place of birth was in the United States.

(C) A final adoption decree showing the applicant's name and that the applicant's place of birth was in the United States.

(D) A Consular Report of Birth Abroad of a citizen of the United States or a certification of the applicant's Report of Birth of a United States citizen issued by the Secretary of State.

(E) A Naturalization Certificate or Certificate of Citizenship issued by the Secretary of Homeland Security or any other document or method of proof of United States citizenship issued by the Federal government pursuant to the Immigration and Nationality Act.

(F) An American Indian Card issued by the Department of Homeland Security with the classification 'KIC'.

**SEC. 4. NATIONAL PROCEDURES FOR VOTER REGISTRATION FOR ELECTIONS FOR FEDERAL OFFICE.**

(a) IN GENERAL.—Except as provided in [subsection (b)] subsection (c), notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office—

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 5;

(2) by mail application pursuant to section 6; and

(3) by application in person—

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 7.

(b) *REQUIRING APPLICANTS TO PRESENT DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP.*—*Under any method of voter registration in a State, the State shall not accept and process an application to register to vote in an election for Federal office unless the applicant presents documentary proof of United States citizenship with the application.*

**[(b)] (c) NONAPPLICABILITY TO CERTAIN STATES.**—**[This Act does not apply to a State]** *Except with respect to the requirements under subsection (i) and (j) of section 8 in the case of a State described in paragraph (2), this Act does not apply to a State described in either or both of the following paragraphs:*

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this Act, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(d) *PERMITTING STATES TO ADOPT CERTAIN REQUIREMENTS AFTER ENACTMENT.*—*Subsections (i) and (j) of section 8 shall not apply to a State described in subsection (c)(2) if the State, by law or regulation, adopts requirements which are identical to the requirements under such subsections not later than 60 days prior to the date of the first election for Federal office which is held in the State after the date of the enactment of the SAVE Act.*

**SEC. 5. SIMULTANEOUS APPLICATION FOR VOTER REGISTRATION AND APPLICATION FOR MOTOR VEHICLE DRIVER'S LICENSE.**

(a) **IN GENERAL.**—(1) **[Each State motor vehicle driver's license application]** *Subject to the requirements under section 8(j), each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.*

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

(b) **LIMITATION ON USE OF INFORMATION.**—No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

(c) **FORMS AND PROCEDURES.**—(1) **[Each State shall include]** *Subject to the requirements under section 8(j), each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.*

(2) The voter registration application portion of an application for a State motor vehicle driver's license—

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to—

(i) prevent duplicate voter registrations; **[and]**

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process; *and*

(iii) *verify that the applicant is a citizen of the United States;*

(C) shall include a statement that—

(i) states each eligibility requirement **[(including citizenship)]**, *including the requirement that the applicant provides documentary proof of United States citizenship;*

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application—

(i) the information required in section 8(a)(5) (A) and (B);

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes**[/; and]**, *other than as evidence in a criminal proceeding or immigration proceeding brought against an applicant who knowingly attempts to register to vote and knowingly makes a false declaration under penalty of perjury that the applicant meets the eligibility requirements to register to vote in an election for Federal office; and*

(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

(d) CHANGE OF ADDRESS.—Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

(e) TRANSMITTAL DEADLINE.—(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.



**SEC. 6. MAIL REGISTRATION.**

(a) FORM.—(1) **Each State shall accept and use** *Subject to the requirements under section 8(j), each State shall accept and use the mail voter registration application form prescribed by the [Federal Election Commission] Election Assistance Commission pursuant to section 9(a)(2) for the registration of voters in elections for Federal office.*

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 9(b) for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) AVAILABILITY OF FORMS.—The chief State election official of a State shall make the forms described in subsection (a) available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs. *The chief State election official of a State shall take such steps as may be necessary to ensure that residents of the State are aware of the requirement to provide documentary proof of United States citizenship to register to vote in elections for Federal office in the State.*

(c) FIRST-TIME VOTERS.—(1) Subject to paragraph (2), a State may by law require a person to vote in person if—

(A) the person was registered to vote in a jurisdiction by mail; **and**

(B) the person has not previously voted in that jurisdiction~~].~~; *and*

(C) *the person did not provide documentary proof of United States citizenship when registering to vote.*

(2) Paragraph (1) does not apply in the case of a person—

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);

(B) who is provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(e) **ENSURING PROOF OF UNITED STATES CITIZENSHIP.**—

(1) **PRESENTING PROOF OF UNITED STATES CITIZENSHIP TO ELECTION OFFICIAL.**—*An applicant who submits the mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a) shall not be registered to vote in an election for Federal office unless—*

(A) *the applicant presents documentary proof of United States citizenship in person to the office of the appropriate election official not later than the deadline provided by State law for the receipt of a completed voter registration application for the election; or*

(B) *in the case of a State which permits an individual to register to vote in an election for Federal office at a polling place on the day of the election and on any day when vot-*

*ing, including early voting, is permitted for the election, the applicant presents documentary proof of United States citizenship to the appropriate election official at the polling place not later than the date of the election.*

(2) *NOTIFICATION OF REQUIREMENT.*—Upon receiving an otherwise completed mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a), the appropriate election official shall transmit a notice to the applicant of the requirement to present documentary proof of United States citizenship under this subsection, and shall include in the notice instructions to enable the applicant to meet the requirement.

(3) *ACCESSIBILITY.*—Each State shall, in consultation with the Election Assistance Commission, ensure that reasonable accommodations are made to allow an individual with a disability who submits the mail voter registration application form prescribed by the Election Assistance Commission pursuant to section 9(a)(2) or a form described in paragraph (1) or (2) of subsection (a) to present documentary proof of United States citizenship to the appropriate election official.

(d) *UNDELIVERED NOTICES.*—If a notice of the disposition of a mail voter registration application under section 8(a)(2) is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 8(d).

#### **SEC. 7. VOTER REGISTRATION AGENCIES.**

(a) *DESIGNATION.*—(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies—

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

*(iv) Receipt of documentary proof of United States citizenship of each applicant to register to vote in elections for Federal office in the State.*

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 9(a)(2), including a statement that—

(I) specifies each eligibility requirement **[(including citizenship)]**, *including the requirement that the applicant provides documentary proof of United States citizenship*;

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 9(a)(2),

unless the applicant, in writing, declines to register to vote;

*(B) ask the applicant the question, "Are you a citizen of the United States?" and if the applicant answers in the affirmative require documentary proof of United States citizenship prior to providing the form under subparagraph (C);*

**[(B)] (C) provide a form that includes—**

(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity

to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with \_\_\_\_\_"; the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) FEDERAL GOVERNMENT AND PRIVATE SECTOR COOPERATION.—All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a), and all nongovernmental entities are encouraged to do so.

(c) ARMED FORCES RECRUITMENT OFFICES.—(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons *who are citizens of the United States* to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) for all purposes of this Act.

(d) TRANSMITTAL DEADLINE.—(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

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

(a) IN GENERAL.—[In the administration of voter registration] Subject to the requirements of subsection (j), 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 post-marked 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);
- (D) *based on documentary proof or verified information that the registrant is not a United States citizen; or*
- (E) *the registration otherwise fails to comply with applicable State law;*
- (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) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d); *or*
- (C) *documentary proof or verified information that the registrant is not a United States citizen;*
- (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.
- (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 (C) 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) ENSURING ONLY CITIZENS ARE REGISTERED TO VOTE.—

(1) IN GENERAL.—*Notwithstanding any other provision of this Act, a State may not register an individual to vote in elections for Federal office held in the State unless, at the time the individual applies to register to vote, the individual provides documentary proof of United States citizenship.*

(2) ADDITIONAL PROCESSES IN CERTAIN CASES.—

(A) PROCESS FOR THOSE WITHOUT DOCUMENTARY PROOF.—

(i) IN GENERAL.—*Subject to any relevant guidance adopted by the Election Assistance Commission, each State shall establish a process under which an applicant who cannot provide documentary proof of United States citizenship under paragraph (1) may, if the applicant signs an attestation under penalty of perjury that the applicant is a citizen of the United States and eligible to vote in elections for Federal office, submit such other evidence to the appropriate State or local official demonstrating that the applicant is a citizen of the United States and such official shall make a determination as to whether the applicant has sufficiently established United States citizenship for purposes of registering to vote in elections for Federal office in the State.*

(ii) AFFIDAVIT REQUIREMENT.—*If a State or local official makes a determination under clause (i) that an applicant has sufficiently established United States citizenship for purposes of registering to vote in elections for Federal office in the State, such determination shall be accompanied by an affidavit developed under clause (iii) signed by the official swearing or affirming the applicant sufficiently established United States citizenship for purposes of registering to vote.*

(iii) DEVELOPMENT OF AFFIDAVIT BY THE ELECTION ASSISTANCE COMMISSION.—*The Election Assistance Commission shall develop a uniform affidavit for use*

by State and local officials under clause (ii), which shall—

(I) include an explanation of the minimum standards required for a State or local official to register an applicant who cannot provide documentary proof of United States citizenship to vote in elections for Federal office in the State; and

(II) require the official to explain the basis for registering such applicant to vote in such elections.

(B) *PROCESS IN CASE OF CERTAIN DISCREPANCIES IN DOCUMENTATION.*—Subject to any relevant guidance adopted by the Election Assistance Commission, each State shall establish a process under which an applicant can provide such additional documentation to the appropriate election official of the State as may be necessary to establish that the applicant is a citizen of the United States in the event of a discrepancy with respect to the applicant's documentary proof of United States citizenship.

(3) *STATE REQUIREMENTS.*—Each State shall take affirmative steps on an ongoing basis to ensure that only United States citizens are registered to vote under the provisions of this Act, which shall include the establishment of a program described in paragraph (4) not later than 30 days after the date of the enactment of this subsection.

(4) *PROGRAM DESCRIBED.*—A State may meet the requirements of paragraph (3) by establishing a program under which the State identifies individuals who are not United States citizens using information supplied by one or more of the following sources:

(A) The Department of Homeland Security through the Systematic Alien Verification for Entitlements (“SAVE”) or otherwise.

(B) The Social Security Administration through the Social Security Number Verification Service, or otherwise.

(C) State agencies that supply State identification cards or driver's licenses where the agency confirms the United States citizenship status of applicants.

(D) Other sources, including databases, which provide confirmation of United States citizenship status.

(5) *AVAILABILITY OF INFORMATION.*—

(A) *IN GENERAL.*—At the request of a State election official (including a request related to a process established by a State under paragraph (2)(A) or (2)(B)), any head of a Federal department or agency possessing information relevant to determining the eligibility of an individual to vote in elections for Federal office shall, not later than 24 hours after receipt of such request, provide the official with such information as may be necessary to enable the official to verify that an applicant for voter registration in elections for Federal office held in the State or a registrant on the official list of eligible voters in elections for Federal office held in the State is a citizen of the United States, which shall include providing the official with such batched information as may be requested by the official.

(B) *USE OF SAVE SYSTEM.*—The Secretary of Homeland Security may respond to a request received under paragraph (1) by using the system for the verification of immigration status under the applicable provisions of section 1137 of the Social Security Act (42 U.S.C. 1320b-7), as established pursuant to section 121(c) of the Immigration Reform and Control Act of 1986 (Public Law 99-603).

(C) *SHARING OF INFORMATION.*—The heads of Federal departments and agencies shall share information with each other with respect to an individual who is the subject of a request received under paragraph (A) in order to enable them to respond to the request.

(D) *INVESTIGATION FOR PURPOSES OF REMOVAL.*—The Secretary of Homeland Security shall conduct an investigation to determine whether to initiate removal proceedings under section 239 of the Immigration and Nationality Act (8 U.S.C. 1229) if it is determined pursuant to subparagraph (A) or (B) that an alien (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)) is unlawfully registered to vote in elections for Federal office.

(E) *PROHIBITING FEES.*—The head of a Federal department or agency may not charge a fee for responding to a State's request under paragraph (A).

(k) *REMOVAL OF NONCITIZENS FROM REGISTRATION ROLLS.*—A State shall remove an individual who is not a citizen of the United States from the official list of eligible voters for elections for Federal office held in the State at any time upon receipt of documentation or verified information that a registrant is not a United States citizen.

[(j)] (l) *DEFINITION.*—For the purposes of this section, the term “registrant’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. 9. FEDERAL COORDINATION AND REGULATIONS.**

(a) *IN GENERAL.*—The Election Assistance Commission—

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this Act on the administration of elections for Federal office during the preceding 2-year period and including recommendations for

improvements in Federal and State procedures, forms, and other matters affected by this Act; and

(4) shall provide information to the States with respect to the responsibilities of the States under this Act.

(b) CONTENTS OF MAIL VOTER REGISTRATION FORM.—The mail voter registration form developed under subsection (a)(2)—

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that—

(A) specifies each eligibility requirement **[(including citizenship)]** *(including an explanation of what is required to present documentary proof of United States citizenship)*;

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; **[and]**

(4) shall include, in print that is identical to that used in the attestation portion of the application—

**[(i)]** (A) the information required in section 8(a)(5) (A) and (B);

**[(ii)]** (B) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

**[(iii)]** (C) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes**[,]**, *other than as evidence in a criminal proceeding or immigration proceeding brought against an applicant who attempts to register to vote and makes a false declaration under penalty of perjury that the applicant meets the eligibility requirements to register to vote in an election for Federal office; and*

(5) shall include a section, for use only by a State or local election official, to record the type of document the applicant presented as documentary proof of United States citizenship, including the date of issuance, the date of expiration (if any), the office which issued the document, and any unique identification number associated with the document.

\* \* \* \* \*

**SEC. 11. CIVIL ENFORCEMENT AND PRIVATE RIGHT OF ACTION.**

(a) ATTORNEY GENERAL.—The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this Act.

(b) PRIVATE RIGHT OF ACTION.—(1) A person who is aggrieved by **[a violation of this Act]** *a violation of this Act, including the act*

of an election official who registers an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship, may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) ATTORNEY'S FEES.—In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

(d) RELATION TO OTHER LAWS.—(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this Act authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

#### SEC. 12. CRIMINAL PENALTIES.

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) *in the case of an officer or employee of the executive branch, providing material assistance to a noncitizen in attempting to register to vote or vote in an election for Federal office;*

(C) *registering an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship; or*

**[(B)]** (D) the procurement, casting, or tabulation of ballots 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,

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.

\* \* \* \* \*

## MINORITY VIEWS

### REPUBLICANS ARE PLANNING TO UNDERMINE THE 2024 ELECTION

The clear purpose of H.R. 8281 is to prime the American people to question the outcome of the 2024 election. In 2020, President Trump and his allies tried to subvert the outcome of the presidential election by spreading numerous lies that the election had been tainted by widespread fraud and irregularities—claims that led to the deadly January 6, 2021, attack on the Capitol.<sup>1</sup> Indeed, one of the leaders of the effort to subvert the election in Congress was now-Speaker Mike Johnson, who led 126 of his Republican colleagues in filing an amicus brief that would have, if successful, disenfranchised millions of Americans and broken the back of American democracy.<sup>2</sup> But in 2020, Republicans’ attempts to overturn the election, while profoundly damaging, were unsuccessful.

MAGA extremists are hoping to be more successful this November. President Trump and his allies in Congress, including Speaker Johnson and Committee Republicans, are laying the groundwork to contest the 2024 election—beginning by echoing disproven claims about fraudulent noncitizen voting. Despite Republican allegations, there is absolutely no evidence of any widespread noncitizen voting in federal elections.<sup>3</sup> Speaker Johnson has himself admitted this, saying that claims of noncitizen voting in federal elections was not “provable.”<sup>4</sup> But in the face of all evidence,<sup>5</sup> Republicans are intent on creating a problem where there is none, so Americans lose confidence in the security of American elections. By so doing, they hope Americans will be more likely to believe future baseless claims of massive fraud so that Republicans’ attempts to overturn the 2024 election will be more likely to succeed.

### A SOLUTION IN SEARCH OF A PROBLEM: NONCITIZEN VOTING ALMOST NEVER HAPPENS

Noncitizens are not voting in state or federal elections—certainly not at any scale significant enough to sway any American election—and there is overwhelming evidence showing as much. First and foremost, it is already illegal for noncitizens to vote in federal elections. Federal law declares that it is “unlawful for any alien to

<sup>1</sup>See generally *Final Report*, House Report 117–663, SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL, 117th Cong. (2nd Sess. 2022).

<sup>2</sup>Andrew Solender, *126 House Republicans Now Support Lawsuit To Overturn Election In Updated Brief*, FORBES (Dec. 11, 2020), <https://www.forbes.com/sites/andrewsolender/2020/12/11/126-house-republicans-now-support-lawsuit-to-overturn-election-in-updated-brief/?sh=7daf8913e5db>.

<sup>3</sup>Aaron Blake, *Mike Johnson’s telling comment on GOP’s (lack of) voter-fraud evidence*, WASH. POST (May 9, 2024), <https://www.washingtonpost.com/politics/2024/05/09/republican-bogus-claims-vote-fraud/>.

<sup>4</sup>Scott Wong et al., *Speaker Mike Johnson and Trump allies who tried to overturn the 2020 election roll out voting ‘integrity’ bill*, NBC NEWS (May 8, 2024), <https://www.nbcnews.com/politics/congress/speaker-johnson-trump-allies-trying-overturn-2020-election-roll-new-vot-rcna151256>.

<sup>5</sup>For further information on the lack of widespread noncitizen voting in federal elections, see *A Solution in Search of a Problem: Noncitizen Voting Almost Never Happens* below.

vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner.”<sup>6</sup>

Further, not only is it already illegal for noncitizens to vote in federal elections, federal law also makes the “the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent”<sup>7</sup> a felony that could result in a five-year prison term and subsequent deportation. The processes in place to protect American elections are both sturdy and comprehensive.

Why would a noncitizen “risk everything—[their] freedom, [their] life in the United States, [their] ability to be near [their] family—just to cast a single ballot?”<sup>8</sup> Quite simply, they would not: Every reliable, verifiable study ever done on the topic has proved that noncitizen voting in state and federal elections is “vanishingly rare.”<sup>9</sup> Indeed, “[t]he idea that large numbers of people who are in this country illegally would take the risk of being detected to cast a single vote in a presidential election is nonsensical on its face.”<sup>10</sup> As Michael Waldman, Committee Democrats’ witness for the May 16, 2024, hearing on the Safeguard American Voter Eligibility Act (“SAVE Act”), has compellingly written:

For starters, let’s say it as clearly as possible: it is already illegal for noncitizens to vote. They are prohibited from voting in federal elections and state elections in every state. It is very, very illegal. There are strong penalties in the law. And states have strong systems in place to ensure that noncitizens don’t vote—whether on purpose or, as may be more likely, because they are misinformed about their eligibility.<sup>11</sup>

A study by the Brennan Center found that suspected cases of noncitizen voting in state or federal elections—including those that have not been proven in a court of law—account for 0.0001 percent of all ballots cast. The conservative Cato Institute has found that “noncitizens don’t illegally vote in detectable numbers.”<sup>12</sup> Whit Ayres, a longtime Republican pollster, has admitted “there is no evidence of widespread voter fraud that would influence the results of an election.”<sup>13</sup> And as noted above, even Speaker Johnson conceded that there is no evidence of noncitizen voting, an admission The Washington Post called a “telling comment.”<sup>14</sup>

<sup>6</sup> 18 U.S.C. § 611.

<sup>7</sup> 52 U.S.C. § 20511.

<sup>8</sup> Sean Morales-Doyle, *Noncitizens Are Not Voting in Federal or State Elections—Here’s Why*, BRENNAN CTR. FOR JUSTICE (Apr. 12, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/noncitizens-are-not-voting-federal-or-state-elections-heres-why>.

<sup>9</sup> *Id.*

<sup>10</sup> Blake, *supra* note 3.

<sup>11</sup> Michael Waldman, *Noncitizen Voting Is Already Illegal—and Vanishingly Rare*, BRENNAN CTR. FOR JUSTICE (Apr. 17, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/noncitizen-voting-already-illegal-and-vanishingly-rare>.

<sup>12</sup> Alex Nowrasteh, *Noncitizens Don’t Illegally Vote in Detectable Numbers*, CATO INST. (Nov. 25, 2020), <https://www.cato.org/blog/noncitizens-dont-illegally-vote-detectable-numbers>.

<sup>13</sup> Colby Itkowitz et al., *Noncitizen voting is extremely rare. Republicans are focusing on it anyway.*, WASH. POST (May 9, 2024), <https://www.washingtonpost.com/politics/2024/05/09/noncitizen-voting-trump-johnson-elections/>.

<sup>14</sup> Blake, *supra* note 3.



Further, evidence for illegal registration and voting would be exceptionally easy to find, compared to almost every other crime—just by attempting to register to vote, a noncitizen would create a paper trail of criminal activity for state and federal authorities.<sup>15</sup> Indeed, officers at the United States Citizenship and Immigration Services specifically investigate possible past registration and voting during the naturalization process.<sup>16</sup> Republicans’ claims about noncitizen voting ignore the facts and defy common sense.

Republicans have no real interest in preventing noncitizen voting in state and federal elections because there is no problem with noncitizens voting in elections. H.R. 8281 is instead part of Republicans’ evolving election denialism, a spectacle as they shift their focus away from November 2020 and toward November 2024.

#### THE SAVE ACT OVERVIEW

On Wednesday, May 8, 2024, Speaker Johnson joined Congressman Chip Roy (R–TX) and Senator Mike Lee (R–UT) at a press conference on the Capitol steps to announce the introduction of the SAVE Act,<sup>17</sup> a bill that would require voters to provide documentary proof of citizenship (“DPOC”) when registering to vote in federal elections. They were joined at this press conference by noted election deniers such as Cleta Mitchell, Ken Cuccinelli, and Stephen Miller. This press conference followed the April 12, 2024, press conference held by Speaker Johnson and former President Trump at the Mar-a-Lago country club calling for (redundant) legislation meant to prevent noncitizens from voting in federal elections.<sup>18</sup>

The SAVE Act would create extreme DPOC requirements nationwide, burdening every potential voter and particularly affecting people who have difficulty obtaining the required DPOC, including married women who have changed their names, students, the elderly, lower income people, members of Tribal nations, and naturalized citizens. The bill’s requirements would be the most severe voter identification or proof of citizenship law in the nation, even more burdensome than Arizona’s infamous DPOC law that has been subjected to repeated successful federal lawsuits.<sup>19</sup> The bill would do all of this to prevent a problem that does not exist—an entirely pretextual enterprise to frighten American voters and set the stage for a January 6 redux.

#### A. *Acceptable Forms of Documentary Proof of Citizenship*

This bill would amend the National Voter Registration Act (“NVRA”), which currently prohibits states from requiring DPOC from applicants that register under the NVRA’s registration provi-

<sup>15</sup> Morales-Doyle, *supra* note 8.

<sup>16</sup> *Id.*

<sup>17</sup> Other attendees included Congressman Brian Babin (R–TX), Congressman Pat Fallon (R–TX), Congressman Randy Weber (R–TX), and conservative activists.

<sup>18</sup> Lisa Mascaro & Jill Colvin, *Trump gives support to embattled Speaker Mike Johnson at pivotal Mar-a-Lago meet*, AP (Apr. 12, 2024), <https://apnews.com/article/trump-speaker-johnson-maralago-congress-c6eaace204882df054795cf70a5fe60a>.

<sup>19</sup> See, e.g., *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013); *Mi Familia Vota v. Fontes*, F.Supp.3d., 2024 WL 862406 (D. Ariz. 2024); Consent Decree, ECF No. 20, *Lulac v. Regan*, No. 2:17-cv-04102(D. Ariz. June 4, 2018), <https://campaignlegal.org/sites/default/files/Consent%20Decree.pdf>.

sions,<sup>20</sup> to mandate states require Americans to provide DPOC to register to vote. The following forms of DPOC would be allowable:<sup>21</sup>

1. a form of photo identification consistent with the REAL ID Act of 2005 that indicates the applicant is a citizen;<sup>22</sup>
2. a valid United States passport;
3. a military identification card coupled with a military service record showing the applicant's place of birth was in the United States;<sup>23</sup>
4. a valid government-issued photo identification card from a federal, state, or Tribal government showing the applicant's place of birth was in the United States;<sup>24</sup>
5. a valid form of photo identification issued by a federal, state, or Tribal government (such as a standard driver's license) that does not comport with (4) above, so long as it is coupled with:
  - a. a certified birth certificate (with several qualifiers);
  - b. an extract from a United States hospital record of birth showing the applicant's place of birth in the United States;
  - c. a final adoption decree showing the person's name and that their place of birth was within the United States;
  - d. a Consular Report of Birth Abroad or a Report of Birth of a United States citizen issued by the Secretary of State;
  - e. a Naturalization Certificate or Certificate of Citizenship issued by the Secretary of Homeland Security; or
  - f. an American Indian Card issued by the Secretary of Homeland Security with the classification "KIC."<sup>25</sup>

The SAVE Act would not allow states to accept or process a voter registration application without first receiving the required DPOC.

#### *B. Amending the Requirements of the National Mail Voter Registration Form*

The SAVE Act would disallow states from accepting the NVRA's mail voter registration application unless the applicant presents DPOC in person at the office of an appropriate election official. If a state received an otherwise completed voter registration application without DPOC, the state would be required to notify the applicant that additional DPOC is needed. By requiring people to travel to the office of an election official, this provision of the SAVE Act would essentially gut the utility of the mail voter registration application.

<sup>20</sup> See *Arizona v. Inter Tribal Council of Arizona*, 670 U.S. 1, 20 (2013); *Fish v. Schwab*, 957 F.3d 1105, 1136 (10th Cir. 2020); *Fish v. Kobach*, 840 F.3d 710, 750 (10th Cir. 2016).

<sup>21</sup> H.R. 8182, 118th Cong. (2nd Sess. 2024).

<sup>22</sup> This requirement is bizarre; identification issued pursuant to REAL ID does not list a person's citizenship status, and indeed REAL IDs are available to noncitizens.

<sup>23</sup> Tracking down and submitting a military service record is likely a significant burden for military voters.

<sup>24</sup> Apart from passports, most government-issued forms of identification do not list places of birth—merely current residence.

<sup>25</sup> The Kickapoo Act of 1983 enabled Mexican-born members of the Kickapoo Tribe of Oklahoma and the Kickapoo Traditional Tribe of Texas to acquire United States citizenship and free passage over the United States-Mexico border through a special naturalization process. The law did not provide for issuance of Certificate of Citizenship to individuals who acquired citizenship through the Kickapoo Act, however, but rather provided for a small, laminated card that included a classification code "KIC."

The SAVE Act would also require individuals to bring DPOC to vote if they live in a state with same-day voter registration and intend on both registering to vote and casting a ballot at the same time. This would pose a significant burden to many voters, most of whom do not show up to their polling places with their passports or birth certificates.

*C. Process for those without documentary proof of citizenship*

The SAVE Act creates a process for individuals without DPOC so unclear it would likely be unworkable. The bill states that the Election Assistance Commission shall provide guidance for states to accept voter registrations from individuals who lack DPOC, but that the process shall include an applicant (1) signing an attestation under penalty of perjury that they are a United States citizen, and (2) submitting “such other evidence to the appropriate State official demonstrating that the applicant is a citizen of the United States.” What this “other evidence”—that is not already included in the list of acceptable DPOC—could be is unclear.

Further, upon receiving the signed attestation and the additional, undefined proof of citizenship, the SAVE Act would require election officials to make their own determination as to whether the applicant may properly register to vote—and then sign an affidavit themselves explaining their basis for allowing the applicant to register to vote.

*D. State Coordination with Federal Agencies*

A portion of the SAVE Act includes much of the substance of the *Protecting American Voters Act* (H.R. 3162), also sponsored by Congressman Roy, which would require the Secretary of Homeland Security and the Commissioner of the Social Security Administration to provide any state election official with “such information as may be necessary” for the official to verify that a potential voter is in fact a citizen—a process that would be rife with flaws and overburden two already-taxed agencies. H.R. 3162 was previously marked up by the Committee on November 20, 2023.

The Social Security Administration (“SSA”) has previously explained that sharing this information for voter registration purposes is non-mission work for SSA and would divert critical agency resources needed to administer SSA’s programs. Additionally, SSA is not the authoritative source for U.S. citizenship status—SSA’s citizenship data is a snapshot in time and many people may have changed status (become citizens) and may not have notified SSA.

*E. Private Right of Action*

The SAVE Act would amend the NVRA’s private right of action contained in 5.2 U.S.C. 20510(b)(1) to allow for suits against “an election official who registers an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship.” This would undoubtedly result in an avalanche of litigation against election officials in blue states, where the former president has repeatedly alleged noncitizen voting is rampant.

### *F. Criminal Penalties Against Election Officials*

The SAVE Act would amend the NVRA’s criminal penalties contained in 52 U.S.C. 20511 to subject any election official who “register[s] an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship” to hefty criminal fines and up to five years in federal prison. Not only is this a blatant attack on election officials, but the threat of severe criminal penalties would almost certainly make election officials wary to allow applicants who do not have DPOC to make use of the already confusing alternative.

#### COMMITTEE REPUBLICANS’ ELECTIONS CLAUSE HYPOCRISY

Committee Republicans—who have repeatedly emphasized their belief in the constitutional primacy of state power over federal elections—have done an about-face on their view on the Elections Clause. Time and again, Committee Republicans have declared their unwavering loyalty to the idea that “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.”<sup>26</sup> Many of the Republican member of this Committee have made statements akin to this at several hearings this Congress, and indeed they repeated this claim in the text of their American Confidence in Elections Act.<sup>27</sup> They have repeated their enduring belief that congressional action related to our election system is an inappropriate use of power.

It is curious, then, that when filing the SAVE Act, Congressman Roy cited the Elections Clause as the bill’s primary constitutional authority.<sup>28</sup> As discussed above, the SAVE Act would be a dramatic expansion of federal power over state election officials, well beyond the scope of the limited congressional authority Committee Republicans claim to believe in. Consequently, in the face of the sweeping, discriminatory SAVE Act—which would impose significant new requirements for states and would subject state employees to federal criminal penalties—Committee Republicans’ alleged belief in the primacy of state power over federal elections rings hollow. It is clear that Republicans’ view of the Elections Clause is not inviolable—it is mercurial, adapting to the needs of the Republican talking point of the day.

Committee Democrats, by contrast, understand that the intent of the framers of the Constitution was for Congress to have plenary authority over the election of its members. Indeed, when eloquently arguing on behalf of constitutional ratification, Alexander Hamilton made quite clear the “plain proposition, that every government

<sup>26</sup> Congressman Rodney Davis (R-IL), *The Elections Clause: States’ Primary Constitutional Authority Over Elections*, COMM. H. ADMIN. (Aug. 12, 2021), <https://cha.house.gov/cache/files/8/b/8b7e408f-b0b8-427f-85af-261bab2666cc/0620A081A2ADA16BF06CD47CB190DC13.report-the-elections-clause-states-primary-constitutional-authority-over-elections-aug-11-2021.pdf>.

<sup>27</sup> H.R. 4563, 118th Cong. § 101(b)(1) (1st Sess. 2023) (“The Constitution reserves to the States the primary authority and the duty to set election legislation and administer elections—the “times, places and manner of holding of elections”—and Congress’ power in this space is purely secondary to the States’ power and is to be employed only in the direst of circumstances.”).

<sup>28</sup> H.R. 8281—*Constitutional Authority and Single Subject Statements*, CONGRESS.GOV (May 7, 2024), <https://www.congress.gov/bill/118th-congress/house-bill/8281?q=%7B%22search%22%3A%22hr+8281%22%7D&s=2&r=1>.

ought to contain in itself the means of its own preservation.”<sup>29</sup> The Supreme Court has also long upheld Congress’s power under the Elections Clause—since *Ex parte Siebold*, 100 U.S. 371 (1879), the Supreme Court has repeatedly held that Congress’s power over congressional elections is “paramount.”<sup>30</sup> Justice Scalia, writing for the majority in *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013), reaffirmed the “broad” and “comprehensive” scope of the Congress’ authority under the Elections Clause.<sup>31</sup> That Committee Republicans deny these facts in relation to Democratic bills, but quietly adopt this belief for the SAVE Act, is pure hypocrisy.

JOSEPH D. MORELLE  
*Ranking Member.*

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<sup>29</sup>THE FEDERALIST No. 59 (Alexander Hamilton).

<sup>30</sup>*The Elections Clause: Constitutional Interpretation and Congressional Exercise: Hearing Before the H. Comm. on House Admin.*, 117th Cong. 1 (2021) (written testimony on Daniel P. Tokaji).

<sup>31</sup>*Id.*