

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1225 Preventing Voting by Noncitizens

**SPONSOR(S):** Metz and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SM 1514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	12 Y, 4 N	Walker	Kiner
2) State Affairs Committee	16 Y, 1 N	Toliver	Camechis

### SUMMARY ANALYSIS

The National Voter Registration Act of 1993 (NVRA) requires states to use a specified federal form to register voters for federal elections. The form requires the registrant to indicate whether he or she is a U.S. citizen. The U.S. Supreme Court has recently held that because the federal government has pre-empted the states on this matter, states may not require any additional verification of a registrant's citizenship. In addition, a provision of the NVRA has also been interpreted to prohibit states from conducting a program removing noncitizens from the list of eligible voters within 90 days of a primary or general election for federal office.

The Immigration Reform and Control Act (IRCA) authorized the creation of the Systematic Alien Verification for Entitlements (SAVE) program database. The SAVE database verifies the immigration status of individuals seeking certain benefits. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) allows federal, state, or local government agencies to request the citizenship status of individuals subject to certain conditions.

HM 1225 calls upon the U.S. Congress to amend the NVRA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the IRCA and the IIRIRA to expressly grant the states immediate access to the SAVE program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend the NVRA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The National Voter Registration Act of 1993 (NVRA) was enacted to increase voter registration and participation by allowing voters to register with the Department of Highway Safety and Motor Vehicles.<sup>1</sup> The NVRA also requires states to “accept and use” a standard federal form<sup>2</sup> to register voters by mail for elections for federal office.<sup>3</sup> The federal form is created by the Election Assistance Commission<sup>4</sup> in consultation with the chief election officers of the states and contains a provision asking whether the applicant is a U.S. citizen.<sup>5</sup> However, the form does not require verification of the applicant’s citizenship.<sup>6</sup> In 2004, Arizona voters adopted Proposition 200, which required the rejection of “any application for registration that is not accompanied by satisfactory evidence of United States Citizenship.”<sup>7</sup> The law was challenged, and in 2013, the U.S. Supreme Court found the Arizona law invalid because the matter was pre-empted to the federal government by the NVRA.<sup>8</sup> Since the NVRA mandated that states use the federal form, states, the Court opined, could not require verification of an individual’s citizenship beyond the ‘check-the-box’ provision contained in the federal form.<sup>9</sup> In order to supersede the Court’s ruling, Congress would have to amend the NVRA to allow or require additional proof of citizenship.

The NVRA allows states to remove the names of persons from the official list of eligible voters in specific circumstances.<sup>10</sup> Additionally, the NVRA allows states to conduct programs to systematically remove the names of certain ineligible voters.<sup>11</sup> However, a provision of the NVRA requires states that are conducting such a program to complete the program before 90 days prior to a primary or general election for federal office.<sup>12</sup> Currently, courts have interpreted this 90 day provision to mean that a program that systematically removes registrants from the voter rolls on the basis of *citizenship* must conclude at least 90 days before any federal election.<sup>13</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides a mechanism to verify immigration status,<sup>14</sup> but sharply limits the number and reasons for inquiries.<sup>15</sup> However, another potential mechanism for immigration status verification exists. In 1986 the Immigration Reform and Control Act (IRCA)<sup>16</sup> authorized what is presently the Systematic Alien Verification for Entitlements (SAVE) database,<sup>17</sup> administered by U.S. Citizenship and Immigration

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<sup>1</sup> National Voter Registration Act of 1993 (Motor Voter Law), Pub. L. 103-31 (1993), codified as 52 U.S.C. §§ 20501-20511.

<sup>2</sup> U.S. Election Assistance Commission, National Mail Voter Registration Form, *available at*

[http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration\\_1-25-16\\_ENG.pdf](http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_1-25-16_ENG.pdf) (last visited Feb. 4, 2016).

<sup>3</sup> 52 U.S.C. § 20505(a)(1).

<sup>4</sup> *Id.*

<sup>5</sup> 52 U.S.C. § 20508(a)(2).

<sup>6</sup> THE DEPARTMENT OF JUSTICE, About the National Voter Registration Act, *available at* <http://www.justice.gov/crt/about-national-voter-registration-> (last visited Jan. 25, 2016).

<sup>7</sup> Ariz. Rev. Stat. Ann. §16-166(f) (West Supp. 2012).

<sup>8</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).

<sup>9</sup> *Id.* at 2257.

<sup>10</sup> 52 U.S.C. § 20507(a)(3).

<sup>11</sup> 52 U.S.C. § 20507(a)(4).

<sup>12</sup> 52 U.S.C. § 20507(c)(2)(A).

<sup>13</sup> *Arcia v. Sec’y of Fla.*, 772 F.3d 1335, 1348 (11th Cir. 2014). The *Arcia* court also noted that the 90 day provision only applies to programs which “systematically” removes the names of ineligible voters. “As a result, the 90 day provision would not bar a state from investigating potential non-citizens and removing them on the basis of *individualized* information, even within the 90-day window.” (emphasis added).

<sup>14</sup> 8 U.S.C. § 1373(c).

<sup>15</sup> Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. 104-208 (1996).

<sup>16</sup> Immigration Reform and Control Act of 1986, Pub L. 99-603 (1986).

<sup>17</sup> *See* 7 C.F.R. § 272.11.

Services which is within the Department of Homeland Security.<sup>18</sup> SAVE is presently used to determine eligibility for the receipt of benefits or licenses.<sup>19</sup> The SAVE database contains more than 100 million immigration status records.<sup>20</sup>

Since the NVRA was enacted in 1993, the population of foreign born residents has increased from approximately 19 million, accounting for 7.9 percent of the population, to approximately 40 million, accounting for 12.9 percent of the population.<sup>21</sup> Of those, the population of unauthorized foreign born residents has increased from approximately 3.5 million in 1993 to 11.3 million in 2014.<sup>22</sup> Of the 40 million total foreign born residents, 44 percent are naturalized citizens eligible to vote.<sup>23</sup> The national average of foreign born citizens as a percent of total state population is 12.9 compared to 19.4 percent of Florida's population.<sup>24</sup>

### **Effect of the Memorial**

HM 1225 calls upon the U.S. Congress to amend the NVRA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the IRCA and IIRIRA to expressly grant the states immediate access to the SAVE program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend the NVRA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

#### **B. SECTION DIRECTORY: N/A**

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>18</sup> See also AMERICAN IMMIGRATION COUNSEL, The Systematic Alien Verification for Entitlements (SAVE) Program: A Fact Sheet, available at <http://www.immigrationpolicy.org/just-facts/systematic-alien-verification-entitlements-save-program-fact-sheet> (last visited Jan. 29, 2016).

<sup>19</sup> *Supra* fn. 16.

<sup>20</sup> U.S. DEPARTMENT OF HOMELAND SECURITY: U.S. CITIZENSHIP AND IMMIGRATION, What is SAVE?, available at <https://www.uscis.gov/save/what-save/what-save> (last visited Jan. 25, 2016).

<sup>21</sup> U.S. CENSUS BUREAU, The Foreign-Born Population in the United States, available at [https://www.census.gov/newsroom/pdf/cspan\\_fb\\_slides.pdf](https://www.census.gov/newsroom/pdf/cspan_fb_slides.pdf) (last visited Jan. 29, 2016).

<sup>22</sup> PEW RESEARCH CENTER, 5 facts about illegal immigration in the U.S., available at <http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/> (last visited Jan. 29, 2016).

<sup>23</sup> *Supra* fn. 20.

<sup>24</sup> *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The memorial does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.