



Primer: Why America Needs the SAVE Act

By: Nikolaus Schuster

Summary

On April 12, 2024, House Speaker Mike Johnson and 2024 Republican presidential candidate Donald Trump announced that the House Republican Conference would introduce legislation requiring proof of citizenship to vote.¹ While often dismissed by progressive institutions and media outlets, there is significant evidence that illegal immigrants have voted in federal elections for over 30 years:

- 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.”²
- Pennsylvania found 11,000 registrants suspected of being noncitizens after becoming aware of a decades-old “glitch” in the state’s “motor voter” registration system in 2017. It removed 2,500 individuals from the rolls, and it could not verify the citizenship status of the other 8,700 registrants.³
- Virginia has removed over 11,000 registrants from its rolls between 2014-2023—and more than 6,300 from January 2022 to July 2024 alone—upon learning that they had declared themselves noncitizens in other interactions with government, typically in transactions with the state’s department of motor vehicles.⁴
- Arizona classifies some 42,000 people on its rolls as “federal-only” registrants as of July 1, 2024—after they had failed to provide the proof of citizenship necessary to vote in state and local races.⁵

¹ (April 12, 2024). “House Speaker Johnson Visits Former President Trump at Mar-a-Lago,” *C-SPAN*. <https://www.c-span.org/video/?534896-1/house-speaker-johnson-visits-president-trump-mar-lago>

² Committee on House Administration Report (June 14, 2024). “Safeguard American Voter Eligibility Act,” *U.S. House of Representatives*. <https://www.congress.gov/118/crpt/hrpt552/CRPT-118hrpt552.pdf>

³ Weingarten (August 15, 2024). “Analysis: Noncitizens Found on Voter Rolls Across Multiple States,” *The Tennessee Star*.

<https://tennesseestar.com/elections/analysis-noncitizens-found-on-voter-rolls-across-multiple-states/realclearwire/2024/08/15/>

⁴ *Ibid.*

⁵ *Ibid.*

On May 8, 2024, Speaker Johnson, Congressman Chip Roy, and Senator Mike Lee introduced the Safeguard American Voter Eligibility (SAVE) Act.⁶ Amid the record amount of illegal border crossings over the past three and a half years, the SAVE Act would ensure that only U.S. citizens vote in federal elections by requiring proof of citizenship when registering to vote.

Background

Federal law prohibits noncitizens from voting in federal elections but following the Supreme Court's 2013 decision in *Arizona v. Inter Tribal Council of Ariz., Inc.*, states have been prevented from asking applicants registering to vote in federal elections for proof of U.S. citizenship.⁷ Specifically, the Court held that Arizona's proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA). This has made both the federal prohibition against noncitizen voting as well as state prohibitions unenforceable. Furthermore, millions of illegal aliens have entered the U.S. since President Biden took office, which underscores legitimate concerns that federal elections are not secure and that non-citizens have open pathways to interfere and participate in American elections.

The NVRA was signed into law by President Bill Clinton in 1993 and requires states to provide individuals with voter registration materials when they apply for a driver's license. Although almost no state allows noncitizens to vote in federal elections, over 20 states do allow noncitizens to apply for driver's licenses.⁸ Due to human error among other potential reasons, noncitizens are provided voter registration forms and might unlawfully register to vote. Pennsylvania admitted that just a few years ago it had inadvertently allowed over 10,000 noncitizens to register to vote via this process, and Texas has had similar problems with nearly 100,000 registrations.⁹ On August 26, 2024, Texas Governor Greg Abbott announced that over 1 million ineligible voters were removed from the state's voter rolls, including a suspected 6,500 noncitizens, many of whom had a previous history of voting.¹⁰

Non-citizens are also eligible for numerous federal benefit programs such as the Supplemental Nutrition Assistance Program, the Supplemental Security Income Program, Temporary Assistance for Needy Families, and Medicaid, among others.¹¹ 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. To make matters worse, on March 7, 2021, President Joe Biden signed an executive order, "Executive Order on Promoting Access to Voting," that turns every federal agency into a voter registration agency under the NVRA.¹² Under the order, the heads of these

⁶ Speaker Johnson (May 8, 2024). "Americans Should Decide American Elections," *mikejohnson.house.gov*. <https://mikejohnson.house.gov/news/documentsingle.aspx?DocumentID=1387>

⁷ Scalia (June 17, 2013). "Arizona v. The Inter Tribal Council of Arizona, Inc.," *SCOTUSblog*. <https://www.scotusblog.com/case-files/cases/arizona-v-the-inter-tribal-council-of-arizona-inc/>

⁸ Committee on House Administration Report (June 14, 2024). "Safeguard American Voter Eligibility Act," *U.S. House of Representatives*. <https://www.congress.gov/118/crpt/hrpt552/CRPT-118hrpt552.pdf>

⁹ *Ibid.* pg. 10.

¹⁰ Office of the Texas Governor (August 26, 2024). "Governor Abbott Announces Over 1 Million Ineligible Voters Removed From Voter Rolls," *gov.texas.gov*. <https://gov.texas.gov/news/post/governor-abbott-announces-over-1-million-ineligible-voters-removed-from-voter-rolls>

¹¹ Committee on House Administration Report (June 14, 2024). "Safeguard American Voter Eligibility Act," *U.S. House of Representatives*. <https://www.congress.gov/118/crpt/hrpt552/CRPT-118hrpt552.pdf>

¹² Exec. Order No. 14019, 86 Fed. Reg 19569 (Mar. 7, 2021)

agencies are instructed to 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.¹³ As a result, noncitizens are more likely today to encounter voter registration materials when they engage with a federal agency.

The current framework does not provide much recourse since the NVRA does not explicitly provide states the authority to remove noncitizens from voter rolls.¹⁴ Furthermore, states and localities have limited access to federal databases to confirm the citizenship of individuals on voter rolls. For example, the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) Program allows DHS to verify the immigration status or naturalized or derived citizenship status for any individual listed in its database of processed names.¹⁵ However, DHS has been ineffective at providing quick access and too few states routinely utilize it. Some states report long processing delays or apparent "slow walking" of requests.¹⁶ Some states suggest that though slow, they are adequately scrubbing their voter rolls through SAVE database efforts. Again, the SAVE database only lists known illegals who have been registered in the database and does not account for unknown illegals, which number in the millions nationally, nor does it account for known illegals who are using fraudulent Social Security numbers. The U.S. Social Security Administration (SSA) maintains information regarding the citizenship status of individuals applying for Social Security numbers, but federal law is particularly strict on when the SSA is allowed to provide citizenship information to requesting agencies.¹⁷

The NVRA's Federal Form and *Arizona v. Inter Tribal Council of Ariz., Inc*

The NVRA, which was designed to boost the number of eligible citizens registered to vote, created a national mail voter registration application form (federal form). The law requires each state to "accept and use" the federal form for applicants who register to vote in elections for federal office.¹⁸ 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. However, to be placed on the federal form, those instructions must first be accepted by the U.S. Election Assistance Commission (EAC).

Arizona requested that the EAC include their documentary proof of citizenship requirement as part of their state-specific instructions, but the EAC refused, and in response Arizona enacted a statute that requires state officials to reject an applicant's federal form if it lacks documentary proof of citizenship.¹⁹

Litigation ensued and in *Arizona v. Inter Tribal Council of Ariz., Inc.* the Supreme Court held that the NVRA's command that States "accept and use" the federal form preempted Arizona's

¹³ Committee on House Administration Report (June 14, 2024). "Safeguard American Voter Eligibility Act," *U.S. House of Representatives*. <https://www.congress.gov/118/crpt/hrpt552/CRPT-118hrpt552.pdf>

¹⁴ *Ibid.* pg. 12

¹⁵ *Ibid.* pg. 13

¹⁶ *Ibid.* pg. 14

¹⁷ *Ibid.* pg. 14

¹⁸ *Ibid.* pg. 15

¹⁹ *Ibid.* pg. 15-16

requirement that state officials reject an applicant's federal form without documentary proof of citizenship. As a result, Arizona and every other state with a documentary proof of citizenship requirement have to accept the registration of applicants that used the federal form and allow them to vote in federal elections regardless of any state law to the contrary.²⁰

SAVE Act Key Provisions

The effects of the NVRA as described above have prevented states from securing their elections and additional legislation is required to ensure only U.S. citizens vote in federal elections. Under the SAVE Act, voters would have to provide proof of U.S. citizenship when registering to vote in federal elections and the EAC would have to provide guidance to chief state election officials on implementing the bill's provisions within 10 days of enactment. The bill would supersede the Supreme Court's decision in *Arizona v. Inter Tribal Council of Ariz., Inc.* by codifying documentary proof of U.S. citizenship on the federal level. Below is a breakdown²¹ of the key provisions in the bill:

- **Proof of Citizenship**²²
 - States cannot accept an application to register to vote in a federal election unless the applicant presents any of the following documents that demonstrate proof of citizenship:
 - A photo ID consistent with the 2005 Real ID Act that indicates they are a citizen.
 - A U.S. passport.
 - An official military identification card with a U.S. military record showing the service member's place of birth was in the U.S.
 - A valid photo ID card issued by a federal, state, or tribal government showing the individual's birthplace was in the US.
 - Any other government-issued photo ID accompanied by other documents such as a birth certificate, hospital record, or naturalization certificate.
- **Mail-in Voting**²³
 - Individuals using mail-in forms cannot be registered to vote unless they present citizenship documents in person at an election official's office, or at polling places in states that allow same-day voter registration.
- **Driver License Registration**²⁴
 - Any voter registration forms that are included with a driver's license application would have to assert that if an ineligible individual registers to vote, the information could be used as evidence in a criminal or immigration proceeding.
- **Database Program**²⁵

²⁰ Ibid pg. 16

²¹ Parnass (July 8, 2024). "BGOV Bill Summary: "H.R. 8281, Voter Citizenship Proof," *Bloomberg Government*.

²² Rep. Roy (July 23, 2024). "H.R. 8281 – SAVE Act, pg. 2-3," *Congress.gov*.
<https://www.congress.gov/118/bills/hr8281/BILLS-118hr8281pcs.pdf>.

²³ Ibid. pg. 8

²⁴ Ibid. pg. 6

²⁵ Ibid. pg. 15

- o States would be required to create a program to identify individuals who aren't citizens using information from DHS's SAVE service and the Social Security Administration. Federal agencies would have to provide state election officials with requested information to determine voter eligibility within 24 hours, and couldn't charge a fee for responding to the request.
- **Removing Noncitizens from Voter Rolls**²⁶
 - o The measure will require states to remove an individual from their registration rolls if they receive documentation or accurate information that the individual is not a U.S. citizen.
- **Penalties**²⁷
 - o The bill would expand an existing private right of action to allow individuals to bring civil lawsuits against election officials who register applicants without proof of citizenship.
 - o Election officials who register an applicant to vote in an election without proof of citizenship would be subject to criminal penalties.
 - o Members of the Executive branch who provide assistance to noncitizens attempting to register to vote would also be subject to criminal penalties.

Conclusion

Noncitizen voting is a danger to the security of the American republic. Since President Biden assumed office, there has been a massive number of illegal immigrants crossing the southern border, averaging 2 million per year from 2021 to 2023.²⁸ These illegal immigrants, along with millions of existing noncitizens, are eligible for a variety of benefits and through certain loopholes they have been given the ability to register to vote. 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, however as stated above there is substantial evidence that thousands of illegal immigrants continue to vote illegally.

Progressive politicians and their far-left allies are vehemently opposing the SAVE Act and are attempting to gaslight the public by making assertions that the bill is “redundant” and designed to “intimidate election officials”.²⁹ They are making the claim that since it is already illegal for noncitizens to vote in federal elections then no problem exists, which is like saying since alcohol is illegal for individuals under the age of 21 there is no reason to check ID when someone tries to purchase it. What progressives refuse to tell the American people is that the Supreme Court's interpretation of the NVRA in *Arizona v. Inter Tribal Council of Ariz., Inc* literally prohibits states from verifying citizenship during the voter registration process, making it nearly impossible for states to enforce the law against non-citizen voting on the front end. This is why

²⁶ Ibid. pg. 18

²⁷ Ibid. pg. 20-21

²⁸ Miroff, Sacchetti, Forstenson (July 28, 2024). “Trump vs. Biden on immigration: 12 charts comparing U.S. border security,” *The Washington Post*.

<https://www.washingtonpost.com/immigration/2024/02/11/trump-biden-immigration-border-compared/>

²⁹ Solender (July 6, 2024). “Democrats whip against GOP's latest election crackdown,” *Axios*.

<https://www.axios.com/2024/07/06/house-democrats-oppose-gop-noncitizen-voting-bill>.

the SAVE Act is important. It's the equivalent of requiring a liquor store to verify that the 14 year old claiming to be 21 is not actually 21, or more directly, it makes the crime of voting illegally enforceable by mandating proof that someone is legally allowed to vote when registering to vote.

It is suspicious that so many political progressives would oppose such a commonsense measure and reinforces the belief that their broader agenda is to import and register as many illegal immigrants as possible to ensure the votes of U.S. citizens are canceled out. Senate Majority Leader Chuck Schumer said the quiet part out loud by once stating “the only way we’re going to have a great future in America is if we welcome and embrace immigrants—the Dreamers and all of them, because our ultimate goal is to help the Dreamers but [also] to get a path to citizenship for all 11 million or however many undocumented there are here.”³⁰ Progressives will never admit that illegal voting by noncitizens is a problem because if they did so it would wreck their long-term ideological agenda. Furthermore, if Democrats win the House and Senate this year they will likely revive the For the People Act, which would federalize the U.S. election process and permanently prevent states from determining the qualifications and eligibility of voters.

Congress must pass the SAVE Act to secure American elections and ensure that the results of any election are not subverted by noncitizens illegally voting. This month Members will have an opportunity to attach the SAVE Act to a stopgap measure to fund the government. If Congress is going to continue the trend of Omnibus/CR spending, then it should use that process to secure a fundamental right of American citizens.

³⁰ Mehlman (January 2023). “Schumer calls for Amnesty for Every Illegal in the country,” *FAIR*. <https://www.fairus.org/schumer-calls-amnesty-every-illegal-alien-country>.