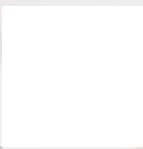


Proof of Citizenship



**Arizona's First in the Nation Model Policy
to Stop Noncitizens from Voting**

Background

Right now, Arizona is the only state actively rejecting applications to register to vote that do not include proof of citizenship. Every other state can and must do the same.

For the past two decades, Arizona has been on the forefront fighting to stop noncitizens from voting by requiring proof of citizenship to register to vote. In that time, we have developed the framework that every other state must adopt to protect their elections.

The National Voter Registration Act

The problem of noncitizens registering to vote and voting would be resolved if Congress would pass the **SAVE ACT**. This is a problem of the Federal government's making, and it is a problem they can solve. It originates with the National Voter Registration Act (NVRA) which established a "federal" voter registration form (Federal Form) that every state is required to "accept and use." Now designed by the Election Assistance Commission, the form does not and has never included a requirement for applicants to provide proof of citizenship.

Arizona's Proof Of Citizenship Requirement Challenged

In 2004, Arizona voters approved Prop 200 which among other things required proof of citizenship to register to vote across the board. That voter approved law was immediately challenged and in 2013 the US Supreme Court held that the NVRA's "accept and use" mandate preempts our proof of citizenship requirement. Following that decision, Arizona bifurcated our voter registrations system: those who use the State Form and provide proof of citizenship are registered to vote in all elections for which they are qualified, those who use the Federal Form without proof of citizenship are registered as "Federal Only Voters" and receive a ballot with only "federal" elections (US House, US Senate, and President).

Arizona was sued again, this time arguing that we cannot reject state voter registration forms without proof of citizenship while accepting Federal Forms without it. In 2018, the Secretary of State unilaterally entered into a Consent Decree agreeing to treat the State Form in the same manner as the Federal Form, meaning that those who use the State Form and do not provide proof of citizenship are registered as "Federal Only Voters" just as those who use the Federal Form. The result was explosive growth in the number of individuals registered without proof of citizenship. In 2018 (before the Consent Decree went into effect) only 1,700 "Federal Only Voters" voted. In 2020, 11,600 voted.

This Consent Decree, however, was in sharp conflict with what the US Supreme Court held in 2013, namely that "states retain the flexibility to design and use their own forms." That is why in 2022 the Arizona legislature passed HB2492, a bill that provides the framework for all states to protect their voter registration system.



The Model: HB2492

First, HB2492 requires election officials to reject any state forms submitted without proof of citizenship. This is something the US Supreme Court held the state has authority to do in 2013, and again in litigation over HB2492 the US Supreme Court granted an emergency motion effectively upholding this provision. Every state can and must adopt this requirement now.

Second, HB2492 requires election officials to consult databases with citizenship information to which they have access before registering an applicant. If it is found the applicant is not a citizen, the application is rejected, in line with the US Supreme Court's 2013 decision that "nothing prevents states from denying registration based on information in their possession that the applicant is ineligible." If the applicant's citizenship status cannot be confirmed either way, the applicant is registered as a "Federal Only Voter," placed on a separate voter registration list, and is only eligible to vote in certain elections.

Finally, HB2492 prevents "Federal Only Voters" from voting for Presidential Electors and from voting by mail. The NVRA cannot regulate Presidential elections because Congress does not have the power to regulate them, instead the States have plenary authority over the manner of appointing Electors. And the NVRA addresses *registration* requirements, not the *manner* of voting, and therefore cannot regulate the qualifications states set for voting by mail.



HB2492 and the SAVE Act Work Together

The cleanest solution to the problem is passing the **SAVE ACT** and requiring proof of citizenship across the board. In the meantime, adopting the HB2492 model places states in the best position possible – immediately beginning to reject State Forms without proof of citizenship, conducting due diligence on Federal Form applications submitted without proof of citizenship on the front end, and preventing Federal Only Voters from voting by mail and in Presidential elections. When the SAVE Act is passed, states with these statutes in place will be ready to go on day one, having already been rejecting their own State Forms that do not include proof of citizenship.

Model Policy

I. QUALIFICATIONS OF ELECTORS

A. Every resident of this state is qualified to register to vote if the resident:

1. Is a citizen of the United States and has provided documentary proof of citizenship.
2. Will be eighteen years of age or more on or before the date of the regular general election next following his registration.
3. Is a resident of this state.
4. Has not been convicted of treason or a felony, unless restored to civil rights.
5. Has not been adjudicated an incapacitated person.

II. ELIGIBILITY TO VOTE

A. A voter who has not provided documentary proof of citizenship may not vote in any local, statewide, or presidential election and may not cast a ballot by mail.

B. The statewide voter registration database, and any other local voter registration databases, shall separately account for voters who are registered who have not provided documentary proof of citizenship.

III. STATE VOTER REGISTRATION FORMS

A. At minimum, the state voter registration form shall require the applicant's:

1. Full name
2. Date of birth
3. Place of birth
4. Address, or a valid description of the applicant's residential address
5. A valid identification number
6. A statement as to whether or not the registrant is currently registered in another state, county or precinct, and if so, the name, address, county and state of previous registration.
7. The question to the registrant "Are you a citizen of the United States of America?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".
8. The question to the registrant "Will you be eighteen years of age on or before election day?", appropriate boxes for the registrant to check "yes" or "no" and a statement instructing the registrant not to complete the form if the registrant checked "no".
9. A statement that the registrant has not been convicted of treason or a felony, or if so, that the registrant's civil rights have been restored.
10. A statement that the registrant is a resident of this state and of the county in which the registrant is registering.
11. A statement that executing a false registration is a class 6 felony.
12. The signature of the registrant.
13. A statement that the applicant shall submit evidence of United States citizenship with the application and that the election official shall reject the application if no evidence of citizenship is attached.
14. A statement that if the registrant permanently moves to another state after registering to vote in this state, the registrant's voter registration will be canceled.

B. In order to be valid and processed, an application for registration shall include all of the information required by this section and shall be accompanied by documentary proof of citizenship.

C. An election official shall reject any application for voter registration made on the state voter registration form that is not accompanied by documentary proof of citizenship and shall send a notice to the applicant informing the applicant that the application was rejected.

D. An election official who knowingly fails to reject an application for registration as prescribed by this section is guilty of a class 6 felony.

IV. FEDERAL VOTER REGISTRATION FORMS

A. If the registration form produced by the United States Election Assistance Commission does not require documentary proof of citizenship, within ten days after receiving an application for registration on a form produced by the United States election assistance commission that is not accompanied by documentary proof of citizenship, the election official shall use all available resources to verify the citizenship status of the applicant and at a minimum shall compare the information available on the application for registration with the following, provided the election official has access:

1. The Department of Transportation databases of driver licenses or nonoperating identification licenses.
2. The Social Security Administration databases.
3. The United States Citizenship and Immigration Services Systematic Alien Verification for Entitlements Program, if practicable.
4. The National Association for Public Health Statistics and Information Systems Electronic Verification of Vital Events System.
5. Any other state, city, town, county or federal database and any other database relating to voter registration to which the election official has access.

B. After complying with subsection A of this section:

1. If the election official matches the applicant with information that verifies the applicant is a United States citizen and is otherwise qualified to vote as provided by state law, the applicant shall be properly registered.
2. If the election official matches the applicant with information that the applicant is not a United States citizen, the election official shall reject the application, notify the applicant that the application was rejected because the applicant is not a United States citizen and forward the application to the county attorney and attorney general for investigation.
3. If the election official is unable to match the applicant with appropriate citizenship information, the election official shall notify the applicant that the election official could not verify that the applicant is a United States citizen and that the applicant will not be qualified to vote in a presidential election or by mail with an early ballot in any election until documentary proof of citizenship is provided.

C. The election official shall record the efforts made to verify an applicant's citizenship status as prescribed in subsection A of this section. If the election official fails to attempt to verify the citizenship status of an applicant pursuant to subsection A of this section and the election official knowingly causes the applicant to be registered and it is later determined that the applicant was not a United States citizen at the time of registration, the election official is guilty of a class 6 felony.

V. DOCUMENTARY PROOF OF CITIZENSHIP

A. To comply with the requirements of this Title, documentary proof of citizenship means:

1. The number of the applicant's driver license or nonoperating identification license if the agency that issued the license indicates on the license that the person is a United States citizen.
2. A legible photocopy of the applicant's birth certificate that verifies citizenship.
3. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the election official of the applicant's United States passport.
4. A presentation to the election official of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the election official.
5. Other documents or methods of proof that are established pursuant to the Immigration Reform and Control Act of 1986.
6. The applicant's Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number.

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