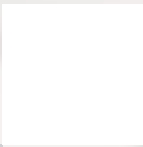


Proof of Citizenship



**Arizona's Model Policy to Stop
Noncitizens from Voting**

B A C K G R O U N D

Why Most States Allow Noncitizens to Register to Vote

Stopping noncitizens from voting is a popular and much needed election integrity reform, yet only two states—Arizona and Wyoming—have established a documentary proof of citizenship (DPOC) requirement to register to vote. Every other state continues to rely upon a checkmark in a box as their only defense against this unlawful voting practice.

Why Haven't More States Taken Action to Ensure Only US Citizens Are Voting in Our Elections?

The difficulty stems from the National Voter Registration Act (NVRA). Passed in 1993, the NVRA created a federal voter registration form (Federal Form) and mandated that every state must “accept and use” it to register individuals to vote. States could still have their own voter registration forms (State Form) that differ from the Federal Form, but they could not deny registration to an individual submitting a complete Federal Form. Importantly, to this day and since its creation, the Federal Form has not included a DPOC requirement.

Arizona First State to Establish DPOC Requirement

In 2004, Arizona voters overwhelmingly approved Prop 200, an initiative measure that created a DPOC requirement to register to vote. This voter-approved law was challenged in Federal Court, and in 2013 the US Supreme Court ruled that Arizona could not enforce a DPOC requirement on Federal Forms, but was free to design and use its own State Form, including the DPOC requirement.

As a result, Arizona bifurcated its voter registration system. Those that submitted a State Form with DPOC are eligible to vote in all elections (federal, state and local), while anyone else that registered with a Federal Form without providing DPOC are listed as “Federal Only” voters and may only vote in federal elections – US House, Senate, and Presidential races. This system worked extremely well, limiting the number of “Federal Only” voters to a tiny fraction of the voting electorate.

Lawfare Attack Against DPOC Requirement

In 2018, Arizona's DPOC requirement was challenged again, this time under the claim that it violated the Equal Protection Clause of the US Constitution. Unfortunately, rather than defending the law in court, Arizona's Secretary of State unilaterally entered into a Consent Decree that allowed anyone that registers with a State Form that doesn't provide DPOC to be registered as a Federal Only Voter, instead of having their form rejected.

In the two years following the Consent Decree, the number of Federal Only Voters casting a ballot in Arizona exploded, from just 1,800 in 2018 to over 11,600 in 2020.

It was clear that if Arizona wanted a robust DPOC requirement, a comprehensive legislative solution was needed to claw back the consent decree and assert Arizona's legal rights under the Constitution to stop noncitizens from voting.

SOLUTION

Arizona's Model Policy to Stop Noncitizens from Voting

In 2022 Arizona passed HB 2492, becoming the first state in the country to adopt a comprehensive DPOC requirement when registering to vote. This landmark legislation created the framework for how every state can overcome the constraints of the NVRA and adopt a robust law that stops non-US citizens from being able to vote.

Key Provisions of the Arizona Model Policy:



1) Reject State Forms that do not include DPOC

Arizona's Model Policy requires that state election officials immediately reject State Forms that are submitted without DPOC. The power for states to reject registrations forms was affirmed by Justice Scalia in the *Arizona v. Inter-Tribal Council* decision, writing, "states retain the flexibility to design and use their own registration forms."



2) Investigate Federal Forms Without DPOC

Arizona's Model Policy requires election officials to consult various databases to which they have access within ten days of receiving a Federal Form without DPOC. If it is found the applicant is not a citizen, it is rejected. If it is found the applicant is a citizen, the applicant is properly registered to vote. If the applicant's citizenship status cannot be confirmed either way, the applicant is registered as a "Federal Only Voter" and placed on a separate voter registration list.



3) Protect State, Local, and Presidential Elections

Arizona's Model Policy further prohibits "Federal Only Voters" from being able to vote by mail or participate in the Presidential contest. The NVRA cannot regulate Presidential elections because Congress does not have the power to regulate them, instead the States hold plenary authority over the manner of appointing Electors under Article II, section 1 of the US Constitution. And the NVRA regulates voter registration, not the manner of voting, and therefore cannot determine the qualifications states set for voting by mail.

Key Provision of Arizona Model Upheld by US Supreme Court

In the weeks before the 2024 election, the US Supreme Court overruled the 9th Circuit Court of Appeals and permitted Arizona to continue rejecting State Forms without DPOC until they rule otherwise in a full appeal. This means that every other state in the country without a DPOC requirement can rely on US Supreme Court precedent to adopt the Arizona Model.

What About the SAVE Act in Congress?

Congress could solve this problem by passing the SAVE Act and requiring DPOC to be included on the Federal Form, but until then the Arizona Model protects elections today and prepares every state for any changes to federal law. Should Congress pass the SAVE Act, the Arizona Model would not conflict and would offer another layer of protection against non-US citizens from voting in our elections.

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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