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NORTH  
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MOTOR VOTER AT 30 YEARS

SUPER  
SR

180



VHS  
PAL SECAM

The cause & barrier to  
stopping non-citizen voting

+5  
Min.

JUNE 2023



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# North Carolina's Noncitizen Voting Problem

## Motor Voter at 30: The Problem and the Hindrance to the Solution

After 30 years under the **National Voter Registration Act (NVRA)** or “**Motor Voter**,” the unintended consequences of the law are clear in North Carolina: it has never been easier to register to vote, so much so that even foreign nationals are being registered. It is extremely difficult to prevent and remove foreign national registrations because of the NVRA's mandates. The entire problem was hidden from the public – including the documentary proof of alien registration - for years. Litigation and court victories were required for the Public Interest Legal Foundation to pry the documentary proof from North Carolina election officials. A federal lawsuit and appeal to the United States Fourth Circuit Court of Appeals was needed before the story below could be told.<sup>1</sup>

In addition to undermining the integrity of American elections, when a foreign national registers to vote – sometimes unwittingly – it is not only problematic for the administration of elections, but it could also have real consequences for the individual's ability to naturalize. Election officials who build administrative systems that do not have adequate safeguards to prevent aliens from registering are sometimes jeopardizing the lawful status of those aliens.

In 2013, the North Carolina State Board of Elections (NCSBE), with local grassroots pressure,<sup>2</sup> became increasingly concerned about foreign nationals registering to vote. An influx of non-U.S. citizens receiving immigration law protections from Obama Era executive orders exacerbated the situation.<sup>3</sup> Those executive orders created new customers out of alien residents at motor vehicle agencies seeking driver's licenses. Other government agencies who were part of the NVRA registration system provided more opportunities to register to vote.

Before the 2014 election, North Carolina officials decided to inventory foreign nationals who had already slipped onto the rolls so they could be prevented from voting in 2014. A pilot research effort was performed in 2011. It was approved of in advance by the Obama Justice Department preclearance procedures under the Voting Rights Act. The program flagged



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more than **600 registrants** for potential citizenship problems.<sup>4,5</sup> Meanwhile, local election officials were receiving desperate requests from noncitizens to get their records cancelled.

But what about those who registered to vote well after they got a driver's license using a green card or work visa? Could they have naturalized in the meantime? These questions led the NCSBE to seek access to the Department of Homeland Security's System for Alien Verification of Entitlements (SAVE) database with the help of the DOJ Voting Section.<sup>6</sup>

According to documents PILF obtained as a result of litigation, the NCSBE had a deadline to meet. With the 2014 midterm election approaching and highly contested statewide races, election officials sought to prevent foreigners voting. Unfortunately for them, they had more than **10,000 registered voters** that might be foreign nationals, according to information they obtained from federal and state immigration databases.

North Carolina performed a 10,000-registrant audit before the midterm election. The audit determined that **1,454 registrants did not appear to be naturalized** before Election Day 2014 and would need to be challenged at the polls. Of those, 89 appeared at polling places. Of those 89 registrants, 24 were challenged and 11 of those challenges were sustained/justified. The NCSBE told legislators after the election that many of the 89 suspected aliens

Motor Voter Causes Citizenship Eligibility Messes & Hampers Cleanup

States Must Build Complicated Traps to Prevent Noncitizen Voting

SAVE Is a Viable Tool for Election Officials

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<sup>1</sup> PILF v. NCSBE, Case No. 5:19-cv-00248 (E.D. N.C.).

<sup>2</sup> NC Voter Integrity Project; DACA dust-up raises troubling questions (October 23, 2014), <https://voterintegrityproject.com/daca-dust-up/>

<sup>3</sup> SEE EXHIBIT 1

<sup>4</sup> SEE EXHIBIT 2

<sup>5</sup> SEE EXHIBIT 3

<sup>6</sup> SEE EXHIBIT 4



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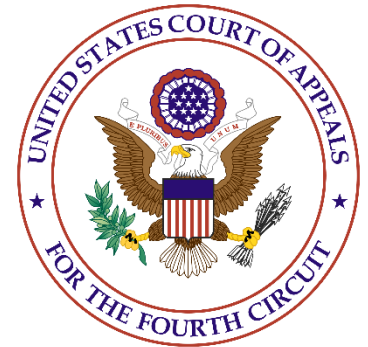
immediately requested cancellations of their registrations instead of undergoing the challenge process.<sup>7</sup>

Election officials considered the audit a success.<sup>8</sup> For the limited purpose of preventing a limited list of suspected aliens from voting unless they could demonstrate eligibility on the spot, it was a success.

North Carolina developed an audit model that was able to stop foreigners from voting. But it unfortunately revealed that Motor Voter's aging provisions made that task more difficult from beginning to end.

## ***PILF v. North Carolina State Board of Elections***

The revelations in this report were unavailable years ago. Despite its admirable work under the administrations of Governors Bev Purdue and Pat McCrory, the NCSBE, under Governor Roy Cooper, did not believe that the details of the audit were public information. In 2018, PILF initiated efforts to review these voter registration list maintenance records. Specifically, PILF sought records where NCSBE officials identified potential aliens on the voter rolls based on evidence indicating a lack of U.S. citizenship. PILF knew such records existed because there were federal indictments of some aliens for voting.<sup>9</sup>



The NVRA provides a statutory right to inspect all voter list maintenance records.<sup>10</sup> For nine months, PILF sought to obtain the records that North Carolina had. During this time, Governor Cooper replaced the members of the State Board of Elections with his own

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<sup>7</sup> NCSBE letter to Rep. Chris Millis (February 6, 2015), [https://publicinterestlegal.org/wp-content/uploads/2023/06/Correspondence\\_2\\_6\\_2015.pdf](https://publicinterestlegal.org/wp-content/uploads/2023/06/Correspondence_2_6_2015.pdf)

<sup>8</sup> WRAL; NC rejected 11 voters in 2014 due to citizenship questions (February 10, 2015), <https://www.wral.com/nc-rejected-11-voters-in-2014-due-to-citizenship-questions/14438306/>

<sup>9</sup> ICE; 19 foreign nationals indicted for illegally voting in 2016 elections (August 27, 2018), <https://www.ice.gov/news/releases/19-foreign-nationals-indicted-illegally-voting-2016-elections>

<sup>10</sup> 52 U.S.C. § 20507(i)(1).



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appointees.<sup>11</sup> With North Carolina refusing to provide documents proving alien voting, PILF was forced to file a federal lawsuit under the NVRA in June 2019.<sup>12</sup>

The trial court in the U.S. District Court in the Eastern District of North Carolina granted the NCSBE's motion to dismiss the complaint citing a broad criminal investigation exemption to the public disclosure provisions of the NVRA. This ruling would have undermined the whole transparency mandate Congress established and undermined efforts to obtain records nationwide. So, PILF appealed to the U.S. Court of Appeals for the Fourth Circuit. In May 2021, the Fourth Circuit ruled in PILF's favor, vacating and remanding the dismissal by the lower court.<sup>13</sup> In the months following, North Carolina agreed to produce the requested records, as well as pay a portion of PILF's attorney's fees.



*U.S. 4th Circuit Court of Appeals, Richmond*

## **Motor Voter Is the Main Cause of Alien Registration & Obstacle to Fixing the Problem**

The NCSBE's 2014 audit outlines how Motor Voter is the law responsible for most foreign nationals registering to vote. Once foreign nationals are registered in vehicle department transactions or through social service agency registration, the NVRA limits what election officials can do about the problem. In other words, sloppy Motor Voter administration gets the aliens registered, and then impairs the ability of election officials to remove aliens from the rolls.

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<sup>11</sup> WBTV; Gov. Cooper makes new NCSBE appointments as NC9 investigation continues (January 31, 2019), <https://www.wbvtv.com/2019/01/31/gov-cooper-makes-new-ncsbe-appointments-nc-investigation-continues/>

<sup>12</sup> PILF; Lawsuit: NC Illegally Withholding Data on Noncitizen Voters (June 18, 2019), <https://publicinterestlegal.org/press/lawsuit-nc-illegally-withholding-data-on-noncitizen-voters/>

<sup>13</sup> PILF; PILF Secures Win for Transparency About Aliens Registering and Voting in North Carolina (May 11, 2021), <https://publicinterestlegal.org/press/pilf-secures-win-for-transparency-about-aliens-registering-and-voting-in-north-carolina/>



## Voter Registration Application

Before completing this form, review the General, Application, and State specific instructions.

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No	This space for office use only.
Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>If you checked "No" in response to either of these questions, do not complete form.</b> (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)	

**The Federal Voter Registration Form<sup>14</sup> hampers investigators from the beginning.** The Federal Form used for voter registration requires no documentary proof of U.S. citizenship. Instead, the applicant is asked to attest to citizenship and age simply by checking a box next to the word “Yes.” The intake official is under no obligation to question these attestations. Indeed, they cannot. If the form is completed, it must be accepted. Motor Voter depends on an honor system for critical statements of eligibility that can be misunderstood by applicants or even ignored by officials when disqualifying answers are provided. For example, aliens are commonly registered to vote when they check the box for “No” on U.S. citizenship.<sup>15</sup>

### North Carolina

Updated: 03-01-2006

**Registration Deadline** — Postmarked 25 days before the election or received in the elections office or designated voter registration agency site by 5:00 p.m. 25 days before the election.

**6. ID Number.** Provide your North Carolina driver's license number, or North Carolina Department of Motor Vehicles ID number. If you do not have a driver's license, then list the last four digits of your social security number.

The NCSBE noted in its legislative reporting that federal immigration officials originally did not allow for their database tools to be used for voter roll list maintenance. Even if they were to allow such studies, voter registration databases do not contain elements like federally issued alien identification numbers, which are required to query them.<sup>16</sup> The Federal Form never asks for that number in full or part. So, the tools just don't exist to fully utilize available immigration data.

**Social Security numbers do not typically provide a solution.** The Federal Form's North Carolina-specific instructions for completion only require last-four digits of Social Security numbers if the applicant does not have a driver's license number.<sup>17</sup> Regardless, it's not safe to assume that a voter registration application missing a driver's license or Social Security number is from a foreign national as it is lawful for U.S. citizens to register without an SSN.

<sup>14</sup> Federal Voter Registration Application ENGLISH,

[https://www.eac.gov/sites/default/files/eac\\_assets/1/6/Federal\\_Voter\\_Registration\\_ENG.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf)

<sup>15</sup> PILF; Chicago Records: 394 Foreign Nationals Removed from Voter Roll (May 23, 2023),

<https://publicinterestlegal.org/reports/chicago-records-394-foreign-nationals-removed-from-voter-roll/>

<sup>16</sup> See footnote 7.

<sup>17</sup> See footnote 14.

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Aliens also often have social security numbers.<sup>18</sup> The NCSBE was unambiguous that it has no ability to spot illegal immigrants on the voter roll. Every state suffers from similar problems. North Carolina officials specifically noted that using the E-Verify system would generally be impossible because full SSNs are needed to run queries.<sup>19</sup> The Federal Form and the corresponding North



Carolina-state specific voter registration form<sup>20</sup> do not require full Social Security numbers. The voter registration forms mandated by Congress under the NVRA provide no assistance to election officials wishing to perform a citizenship audit.

**Motor Voter’s language did not account for the need for DMVs to transmit citizenship verification data in driver licensing transactions, even in the age of REAL ID.**<sup>21</sup> Election officials who want to engage in noncitizen research must work backwards with DMV data. These data may not be up-to-date and reliable. North Carolina officials found that noncitizen DMV customers may not update their immigration statuses in their driver records after naturalization.<sup>22</sup> These means DMV data may indicate a registrant is an alien when in fact they have naturalized. In practice, this means that North Carolina DMV records could remain inaccurate for up to 8 years, the driver’s license lifespan before renewal requirements<sup>23</sup> (in 2023, the NC Legislature considered expanding the window to 16 years).<sup>24</sup>

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<sup>18</sup> SOCIAL SECURITY ADMINISTRATION; Social Security Numbers for Noncitizens (May 2023), <https://www.ssa.gov/pubs/EN-05-10096.pdf>

<sup>19</sup> See footnote 7.

<sup>20</sup> North Carolina Voter Registration Application (May 2023), [https://dl.ncsbe.gov/Voter\\_Registration/NCVoterRegForm\\_06W.pdf](https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf)

<sup>21</sup> <https://www.dhs.gov/real-id>

<sup>22</sup> See footnote 7.

<sup>23</sup> Insurance Information Institute; State Drivers License Renewal Laws (January 2022), <https://www.iii.org/state-drivers-license-renewal-laws-including-requirements-for-older-drivers>

<sup>24</sup> *The News & Observer*; NC lawmakers propose doubling the renewal period for most driver’s licenses (March 30, 2023), <https://www.newsobserver.com/news/politics-government/article273772600.html>

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**DHS-SAVE also suffers reporting delays.** The records obtained in litigation revealed that NCSBE investigators noted two common scenarios in which outdated federal information harmed their study. Despite being the primary tool to



determine immigration status as it relates to eligibility for government programs, the federal SAVE database could have a substantial reporting delay to incorporate naturalizations. This shortcoming is especially problematic because voter registration is offered at naturalization.<sup>25</sup> The new American applying for voter registration is likely to be flagged by SAVE as a non-citizen. Even more convoluted was a scenario where immigrant family units consisting of adults and minors naturalizing together could carry a reporting delay for the children in perpetuity.<sup>26</sup> In essence, a child naturalizing along with his parents could still appear as a noncitizen in SAVE until the child affirmatively contacts federal immigration officials on his own behalf in adulthood.

End to end, Motor Voter in North Carolina introduced the noncitizen problem and then presented obstacles for officials when they sought to undo the damage. Despite all these troubles, officials did manage to make headway and gave some insights into new procedures and needed reforms.

## **States Must Build Complicated Traps to Prevent Noncitizen Voting**

Recall North Carolina's predicament in 2014: 10,000 registered voters were shown as potential non-citizens on immigration related databases. They discovered the databases were not entirely trustworthy. A federal election was coming. The NCSBE reasoned that roughly 1,400 registrants needed to be questioned at the polls because they had no evidence of naturalization. Officials had to quickly build a statewide framework to deal with

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<sup>25</sup> USCIS; Naturalization Ceremonies ... Register to Vote (May 2023), <https://www.uscis.gov/citizenship/learn-about-citizenship/naturalization-ceremonies>

<sup>26</sup> See footnote 7.



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these registrants with questionable citizenship status while still carrying the burden of proof if they indeed prevented a registrant from voting.<sup>27</sup>

Polling place officials were instructed to inform those potential 1,400 aliens of the problem when they tried to vote. If the registrant admitted to being an alien, they signed a document to memorialize the admission and end the interview. If the registrant affirmed under oath to now be a U.S. citizen, their evidence would be considered and voted upon by a panel of poll judges to sustain the challenge, or in the alternative, let the registrant cast a ballot.

Meanwhile, this whole process was creating documents that PILF won a lawsuit to obtain.



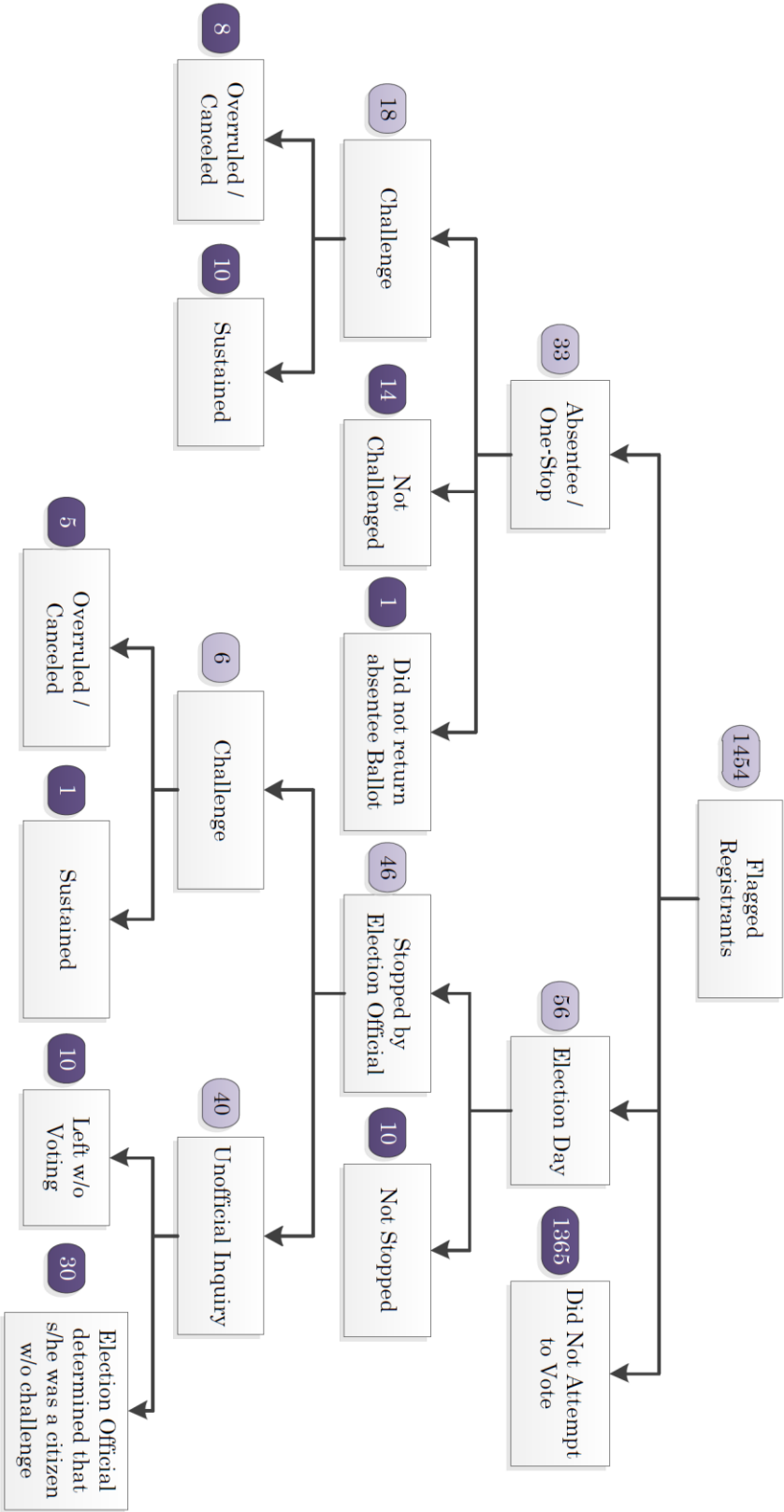
Getty Images

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<sup>27</sup> Ibid.

# SUMMARY DISPOSITION CHART

(Source: NC State Board of Elections 2/6/2015)



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**EXHIBIT A**  
Page 1109 of 1455  
Citizenship Audit Report

	<b>VOTER</b>	<b>DMV MATCHED RECORD</b>
First Name	██████████	██████████
Middle Name		
Last Name	██████████	██████████
Date of Birth	██████████	██████████
DMV Number (Driver's License or State ID Number)	██████████	██████████
Social Security (last digits)	████	████
Address	██████████████████	██████████████████
Alien ID number or Legal Presence Document number		██████████
Legal Presence Document type		██████████████████ ██████████████████ ██████████



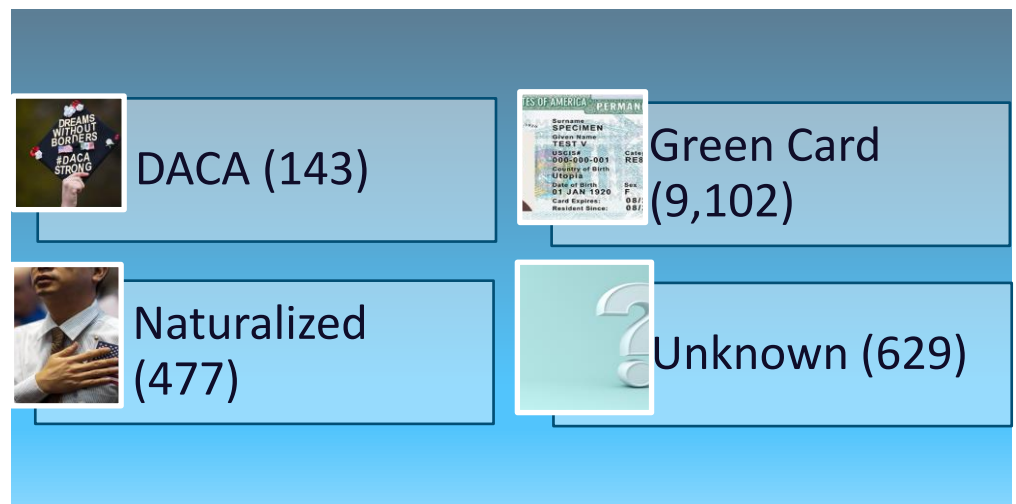


States will always need protocols to prevent ineligible people from voting, even if they were improperly registered by officials at the outset. Polling place filters for non-citizens are an important way to mitigate the problems that Motor Voter has created with noncitizen registrations. Had improvements to Motor Voter been in place – such as expanded real-time data collection and sharing between agencies – the NCSBE’s list of 10,000 potential noncitizens and every other concern would have been shorter. This paper would not have been necessary.

## The SAVE Database Is a Viable Tool for Election Officials

Records obtained by the Foundation as a result of its lawsuit provide first time insight into the facts and details that election officials can see when they query the federal SAVE database. Remember, SAVE cannot be easily accessed by election officials because of Motor Voter’s limits on data collection from registrants. Once the North Carolina DMV provided data to make a SAVE query possible, the NCSBE learned a substantial amount about the 10,000 registrants flagged as potential aliens.

The SAVE database contents do not make much sense without understanding the interplay between DMV and voter roll data. The universe of more than 10,000 possible registered aliens was based



initially on **comparing the voter roll to corresponding DMV information filtered by “DMV\_status” markings.** The first audit comparison found that most of the 10,000 were green card holders likely on a naturalization track. This was the worst-case scenario. If officials failed to block these legal permanent residents from voting, their forthcoming naturalization ceremonies could end up being deportation hearings because they violated federal laws by voting.

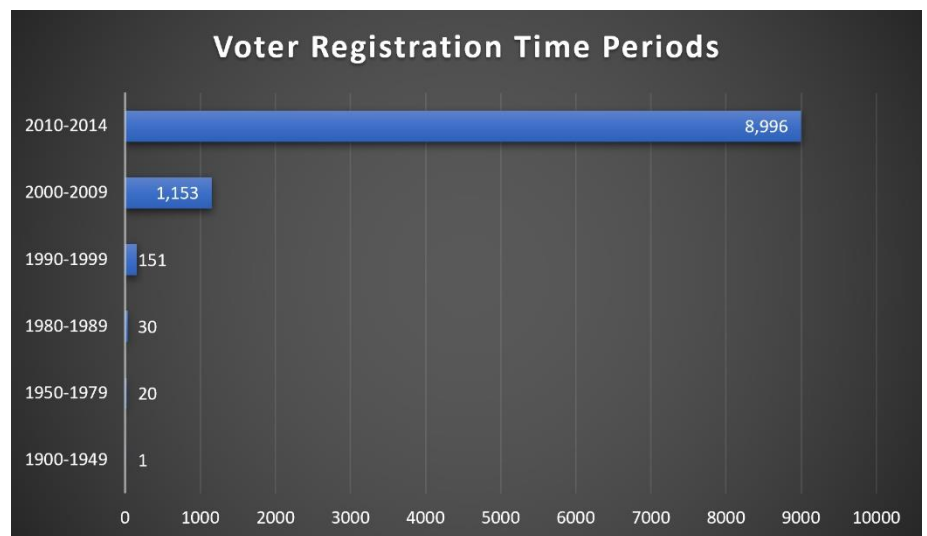
Another sign of conflicts in the data was the 477 who appeared to be “US Citizens” according to DMV records yet SAVE in many cases still listed them as unnaturalized. These types of conflicts would eventually be resolved in polling places for some registrants.

With the DMV noncitizen tags attached to the voter roll, the data revealed sources of registration for the full 10,000 suspected alien registrants.

The table below provides specific registration source data. All labels are original from the disclosed record. This is the first comprehensive glimpse into the registration sourcing for potential alien registrants ever demonstrated.

Specific Voter Registration Sources & Application Types					
MAIL-IN OR FAX	<u>3,985</u>	NO APPLICATION SOURCE	<u>104</u>	FWAB BALLOT	<u>7</u>
IN-PERSON	<u>2,299</u>	VOTER CHANGE ON VERIFICATION	<u>82</u>	DISABILITY (AGENCY)	<u>6</u>
REGISTRATION DRIVES	<u>2,178</u>	VOTER CHANGE ON CONFIRMATION	<u>70</u>	ARMED FORCES (AGENCY)	<u>4</u>
DMV	<u>813</u>	SPANISH LANGUAGE APPLICATION	<u>69</u>	SPANISH APP BY MAIL	<u>2</u>
PUBLIC AGENCY	<u>291</u>	[blank fields in records]	<u>58</u>	DMV WEB	<u>1</u>
LIBRARY & SCHOOL	<u>221</u>	OTHER (ESC) (AGENCY)	<u>31</u>		
RETURN OF NCOA	<u>111</u>	FEDERAL POST CARD APPLICATION	<u>19</u>		

The documents PILF obtained also give the ability to chart when the voter registrations were established.



The SAVE review of the 10,000 suspected aliens came next. The federal database helped to eliminate more than 80

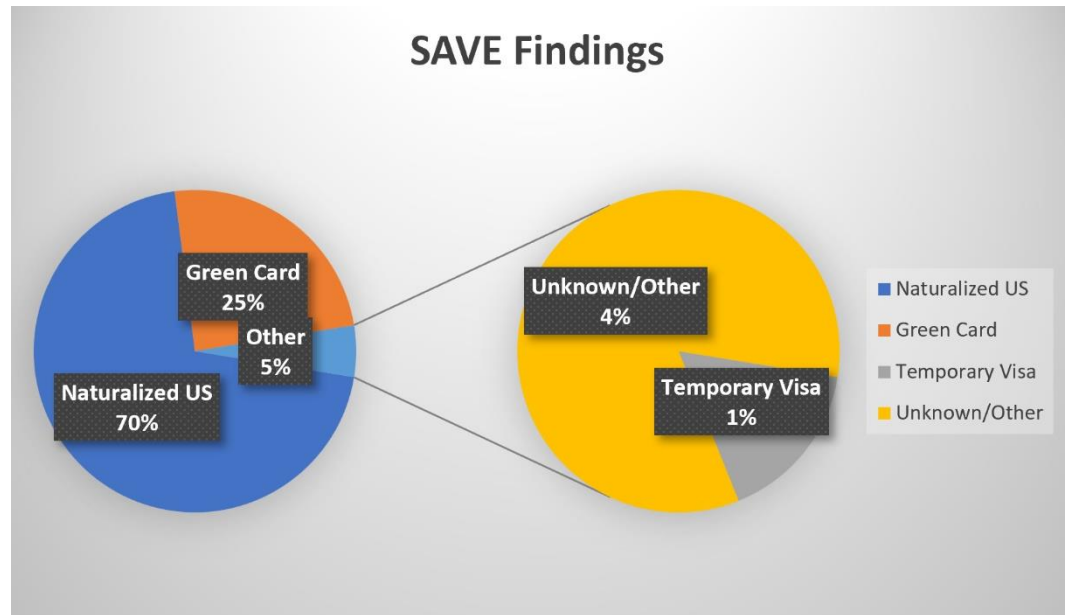
percent of the potential alien list because naturalization had already occurred. The remaining 1,400 were still potential noncitizen registrants. This subset would largely consist



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of green card holders (legal permanent residents), visa holders (such as work authorizations and asylees), and Deferred Action for Childhood Arrivals or DACA (often called DREAMers).

Remember, North Carolina officials had to act quickly to discern the true status of more than 10,000 registrants with questionable citizenship status. The list of 10,000 was overwhelmingly cataloged as voter status ACTIVE.



**The documents obtained by PILF show that the NCSBE found workarounds to SAVE’s search limits.** Even if an official has the required alien ID numbers to begin a SAVE query, they are still confronted with a search throttle by the federal Department of Homeland Security. A state can only look up one potential alien at a time. The NCSBE was required to fill in the online form, submit, and intake search results 10,000 times over. The federal agency – across multiple presidents – would not provide states comprehensive access to the database to compare the entire voter roll to alien data. To speed up this search process, state officials created a bot to pretend to be a human user to operate non-stop until the list of 10,000 was completely tested. Officials said this helped to more quickly absorb search returns and avoid human mistakes like typographical errors from being inserted into the process.<sup>28</sup>

**After Election Day 2014, documents obtained by PILF show that the NCSBE went to work on the remaining 1,400.** Documents show that North Carolina election officials instructed county officials to initiate correspondence, begin challenge proceedings, and ultimately

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<sup>28</sup> See footnote 7.

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cancel registrants based on evidence that the registrant was a noncitizen. The efforts were expected to continue into future election cycles to complete, based on state and Motor Voter requirements.

**SAVE’s usefulness and efficiency will improve with more use, according to the NCSBE.** The NCSBE expressed to legislators the challenges of mixing voter rolls, DMV customer profiles, and SAVE data. Once the audit was completed, they argued that “It is likely that DMV and SAVE data will be of greater use as regular auditing tools”<sup>29</sup> going forward. With each use, election officials would be able to rely on more accurate data to help them correct their records. The NCSBE tapped SAVE again after the 2016 Presidential Election, finding that 41 foreign nationals “with legal status cast ballots.”<sup>30</sup>

## Other Noncitizen Research Projects from States

**In 2017, a Pennsylvania government study revealed that more than 100,000 potential noncitizens registered to vote over two decades.**

PILF brought a federal lawsuit in February 2018 to obtain records that revealed the scope of the disaster.<sup>31</sup> After the lawsuit was filed seeking records, Commonwealth election officials worked

to confirm the eligibility of more than 10,000 potential noncitizens. The federal court



*Then-Philadelphia Commissioner Al Schmidt testifying to 100,000 potential noncitizens registered in PA (2017). He is now the Acting Secretary of State.*

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<sup>29</sup> Ibid.

<sup>30</sup> NCSBE; Post Election Audit Report (April 21, 2017), <https://publicinterestlegal.org/wp-content/uploads/2023/06/2016-Audit-Report.pdf>

<sup>31</sup> PILF; PILF Sues Pennsylvania to Release Data on ‘100K’ Noncitizen Voter Registrants (February 26, 2018), <https://publicinterestlegal.org/press/pilf-sues-pennsylvania-release-data-100k-noncitizen-voter-registrants/>

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granted summary judgment in March 2022 entitling PILF to see documents related to the study.<sup>32</sup> Pennsylvania officials continue to hide other records that would reveal core details of their study, including the methodology and the investigators involved. The case continues as the Commonwealth has appealed the lower court judgment.

What caused the disaster in Pennsylvania and what was done to fix it remains unknown because government officials are hiding the facts. All anyone knows is that some sort of comparison was made between the voter rolls and other data. What was found? Who did the work? How much did it cost? Who was to blame for the mess in the first place? These are all unanswered questions. PILF's litigation to answer these questions has gone on so long that the Philadelphia election official who originally said 100,000 potential foreigners were registered is now the Acting Secretary of State and official defendant in PILF's lawsuit.<sup>33</sup>

**Ohio has flagged hundreds of potential alien registrants for prosecutors.** Secretary Frank LaRose instituted a program for comparing voter and driver data to generate lists of potential noncitizens for prosecution.

Discovery Year	Registrations	Voters	Affected Election
2019 <sup>34</sup>	354	77	2018 General
2021 <sup>35</sup>	117	13	2020 General
2022 <sup>36</sup>	11	1	N/A

**Texas flagged 95,000 potential foreign registrants in 2019.** The Texas Attorney General oversaw an 11-month investigation and flagged nearly 58,000 potential aliens with voting

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<sup>32</sup> PILF; PA Required to Provide Voting History of Noncitizens the Commonwealth Added to the Voter Roll (April 4, 2022), <https://publicinterestlegal.org/press/pennsylvania-required-to-provide-pilf-with-voting-history-of-non-citizens-the-commonwealth-added-to-the-voter-roll/>

<sup>33</sup> *Pittsburgh Post-Gazette*; How many foreign citizens voted in Pa elections? The secretary of state can tell us. (March 14, 2023), <https://www.post-gazette.com/opinion/Op-Ed/2023/03/14/al-schmidt-aliens/stories/202303100005>

<sup>34</sup> Statehouse News Bureau; Ohio's Secretary of State Says 354 Non-Citizens Have Registered to Vote (December 4, 2019), <https://www.stateneews.org/government-politics/2019-12-04/ohios-secretary-of-state-says-354-non-citizens-have-voted-or-registered-to-vote>

<sup>35</sup> OHSOS; LaRose Refers 117 Non-Citizens to Ohio Attorney General for Potential Election Law Violations (July 12, 2021), <https://www.ohiosos.gov/media-center/press-releases/2021/2021-07-12/>

<sup>36</sup> OHSOS; LaRose Refers Non-Citizens to Ohio Attorney General for Potential Election Law Violations (August 10, 2022), <https://www.ohiosos.gov/media-center/press-releases/2022/2022-08-10/>



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records dating as far back as 1996.<sup>37</sup> Officials separated the list of 95,000 potential aliens and asked county election officials to investigate citizenship status.

Interest groups filed three lawsuits to stop the alien verification process. They cited many of the inherent shortcomings of alien verification cited in this report. Texas stopped the program, and the lawsuits were dismissed.<sup>38</sup> That same year, the legislature reformed the alien verification methodology – flagging more than 11,000 registrants for county reviews.<sup>39</sup> <sup>40</sup> In 2022, the Fifth Circuit Court of Appeals ruled that left-leaning interest groups challenging alien verification “offered no meaningful evidence regarding any downstream consequences from an alleged injury under the NVRA.”<sup>41</sup>

## Common Causes of Foreign Registrants

The National Voter Registration Act of 1993 (Motor Voter) provides the most common pathway to the voter roll. States that automate Motor Voter, not giving the immigrant at DMV the chance to decline registration during their DMV transactions, exacerbate the problem. States offering driver’s licenses to *illegal* immigrants only increase traffic to DMVs and the potential for alien voter registration. States with high *legal* immigration mean more noncitizens will seek driver’s licenses or other state identification documents. Finally, third-party voter registration drives can expose unassuming immigrants to easy voter registration.

NC Alien Voting Factors	
Motor Voter	YES
Auto Motor Voter	NO
DLs for Illegals	NO
Legal Immigration	YES
Border State	NO
3 <sup>rd</sup> Party Drives	YES

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<sup>37</sup> *The New York Times*; Texas Secretary of State Questions Citizenship of 95,000 Registered Voters (January 25, 2019), <https://www.nytimes.com/2019/01/25/us/noncitizens-voting-texas.html>

<sup>38</sup> Texas Tribune; Appeals Court Allows Texas to Withhold list of people it thinks are noncitizens and can’t vote (September 30, 2022), <https://www.texastribune.org/2022/09/30/texas-appeals-court-noncitizen-voter-ruling/>

<sup>39</sup> Ibid.

<sup>40</sup> Texas Election Advisory No. 2021-11 (September 9, 2021), <https://www.sos.texas.gov/elections/laws/advisory2021-11.shtml>

<sup>41</sup> See note 30.

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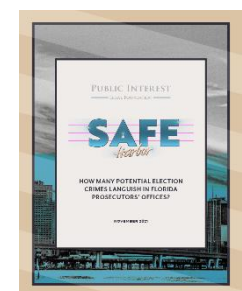
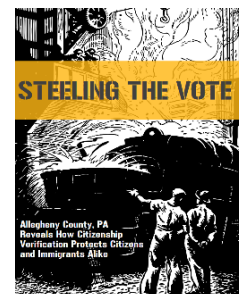
## The First Line of Defense to Stop Foreign National Registration: Foreign Nationals

Few states are like North Carolina, Texas, and Ohio in their efforts to identify foreign nationals on the voter rolls. In most states, there are no efforts made to detect foreign nationals. Election officials are merely waiting for non-citizens to out themselves as improperly registered to vote. Registration alone can get aliens charged with a federal felony.

Foreign nationals typically expose themselves for one reason: they want to remain in the United States as future naturalized citizens. During that process, they face questions about premature registration and voting activities.<sup>42</sup> If they are registered to vote, they are often ordered by immigration officials to cancel registration. These cancellation requests generate paper trails, which PILF then obtains and documents.

### Prior PILF Research, Litigation on Non-Citizen Voting Issues

For nearly a decade, PILF has harvested government records of non-citizen voter cancellations. These studies were carried out in places like Arizona, California, Florida, Illinois, Pennsylvania, New Jersey, Michigan, Nevada, Texas, and sanctuary cities across the nation. Those reports are made available on the PILF website.<sup>43</sup> Sometimes research cannot occur without litigation to unlock official records. PILF has brought and won federal trial and appellate court cases in North Carolina, Pennsylvania, and Texas to secure access.<sup>44</sup> This campaign has made it easier to study



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<sup>42</sup> N-400 – Application for Naturalization (Expires November 30, 2025), <https://www.uscis.gov/sites/default/files/document/forms/n-400.pdf>

<sup>43</sup> PILF Reports archive, <https://publicinterestlegal.org/reports/> SEE ALSO: <https://publicinterestlegal.org/issues/voter-roll-error-map/>

<sup>44</sup> PILF litigation archive, <https://publicinterestlegal.org/cases/>

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non-citizen election participation than ever before in the Motor Voter era.

## **Motor Voter at 30: Time to Modernize**

Motor Voter is showing signs of wear. It has made American elections on one hand less secure, while on the other hand more transparent. It created unforeseen consequences and failures worse than the opponents imagined. After 30 years, it is time for



Congress to do a serious and thoughtful reexamination of law. It has never been easier to register to vote and vote as it is in 2023. Yet, if an applicant fills out the federally mandated Motor Voter registration form, they must be registered to vote, period. States cannot seek documentary proof of citizenship before registering the applicant, unless the state goes through a complicated process of seeking federal approval. As it stands, only an honor system prevents foreign nationals from easily registering to vote (unless officials fail to notice the “NO” on the citizenship question).

### **PILF President, J. Christian Adams**

*“North Carolina’s experience makes clear how some of Motor Voter’s aging provisions are allowing foreign interference in our elections by causing foreign nationals to get registered to vote. Then, the law’s provisions create roadblocks for election officials to correct the record. Congress must modernize Motor Voter. The best way to celebrate 30 years of the National Voter Registration Act is to make sure it serves everyone in America – especially those among us who cannot yet vote.”*



*(Sent Via U.S. Certified Mail)*

May 15, 2012

Buncombe County Board of Elections  
Attn: Ms. Trena Parker, Director  
Post Office Box 7468  
Asheville, N.C. 28802-7468

**Re: Applicant's Name:**

**Date of Birth:**

**Social Security Number:**

**Matter: REQUEST TO WITHDRAW ANY REGISTRATION UNDER  
MY NAME**

Dear Ms. Parker:

Please let this letter serve as a notice and request to cancel and/or withdraw any registration that may have existed or exists under my name.

I am not a U.S. Citizen and recently I applied for Naturalization with the U.S. Citizenship and Immigration Service (USCIS); however my application has been put on pending due to back in or about 09/07/2000 I registered to vote in Buncombe County.

Back in 2000, my English was very little and I went to the Buncombe County Department of Motor Vehicles to renew my driver's license; however, the lady there gave me different forms to fill out and I got confused but she indicated to me to complete all of the forms. I did complete the forms and a few days later I received a voter's registration card in the mail. I did not know that I was not supposed to register to vote.

I have never had the intention to register myself to vote. Now, this mistake is causing me lots of problems with the Immigration Service for them to process my application for naturalization any further.



**On May 4, 2012 the USCIS gave me a Request For Evidence, please find enclosed copies of such letter. At this time, they want to provide evidence form the Buncombe County Voter Registration that your office removed my name from the voting list and evidence of my record/profile with the board of elections indicating how many times I did vote.**

At this time, I respectfully would ask you to **WITHDRAW/CANCEL** my name on any voting list. Please send me any evidence in writing for me to be able to prove that I have requested this withdrawal and record of my profile with your office. The USCIS gave me until June 7, 2012 to provide the above referenced information.

Please find enclosed a copy of my South Carolina driver's license, copy of my Permanent Residence card and a copy of the letter issued by the USCIS.

Thank you in advance for your assistance and cooperation in this matter. If you should need any additional information, please feel free to contact the undersigned at your earliest convenience.


Very truly yours,

A large black rectangular redaction box covering the signature area of the letter.

PLF Research

May 17, 2012

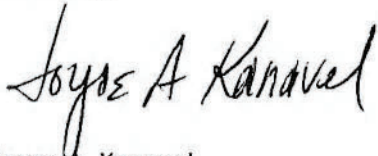


Dear Mr. 

Per your request by letter dated May 15, 2012, you have been removed from our voter registration database on May 17, 2012. Enclosed please find the accompanying documents you requested regarding this matter, a copy of the original registration form, a voter profile showing the removed ("R") status and the se document also indicates if you have ever voted in any elections.

I wish you the best in your request for naturalization.

Sincerely,



Joyce A. Kanavel  
Deputy Director of Voter Registration

PILF Resouirce



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# GET INVOLVED

The **Public Interest Legal Foundation**, a 501(c)(3) non-profit organization, relies on contributions to conduct research and develop findings like those contained in this report.

**This report** would not have been possible without two years of litigation, hundreds of attorney and research hours, and financial backing from people like you. PILF is the **only organization** performing this level of work with respect to voter registration system integrity in America. Time, travel, and technology help deliver new insights into our election systems to better educate citizens and policymakers alike. We also bring litigation to pry this public information from government officials when necessary. **None of this is possible without your support.**

Please help us expand our efforts by visiting [publicinterestlegal.org](https://publicinterestlegal.org) to offer your fully **tax-deductible** gift today.



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**NEWSLETTER**





## STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

**GARY O. BARTLETT**  
Executive Director

February 18, 2013

**MAILING ADDRESS:**  
**P.O. BOX 27255**  
**RALEIGH, NC 27611-7255**

Mr. James L. Forte, Commissioner  
Ms. Barbara Webb, Assistant Director of Driver Services  
North Carolina Division of Motor Vehicles  
3110 Mail Service Center  
Raleigh, NC 27699-3110

RE: Inapplicability of Voter Registration Services to Non-United States Citizens

Dear Mr. Forte and Ms. Webb,

In light of the recent announcement that the N.C. Department of Transportation (NCDOT) will soon begin issuing driver licenses and identification cards to applicants qualified under the federal Deferred Action for Childhood Arrivals (DACA) program, our office would like to make certain that voter registration services will not be offered to these individuals as part of this program. Only United States citizens are qualified to register to vote and vote in North Carolina (see G.S. § 163-55) and North Carolina expressly instructs the DMV representative taking an application for voter registration at the DMV to "inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote" (see G.S. § 163-82.19). It is our understanding that the voter registration module in the DMV's computerized application system is currently disabled if a customer is identified as a lawful presence customer, or non-United States citizen. This inapplicability of voter registration services should be extended to DACA customers as well.

At your earliest convenience, we respectfully ask that you share with us your efforts to ensure that these statutory mandates will be met when NCDOT begins issuance of licenses and identification cards to individuals who qualify for these documents under DACA.

Sincerely,

A handwritten signature in cursive script that reads "Gary O. Bartlett".

Gary O. Bartlett





## STATE BOARD OF ELECTIONS

6400 Mail Service Center ▪ Raleigh, North Carolina 27699-6400

**GARY O. BARTLETT**  
Executive Director

**MAILING ADDRESS:**  
**P.O. BOX 27255**  
**RALEIGH, NC 27611-7255**

### MEMORANDUM

**TO:** Executive Director Gary O. Bartlett

**FROM:** General Counsel Don Wright

**RE:** Citizenship Status Inquiry

**DATE:** April 26, 2011

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On February 22, 2011, our agency mailed 637 letters to registered voters to inquire about their United States citizenship status. We sent follow-up letters on April 6, 2011 to those voters who did not respond to our first mailing. In the event that a mailing was returned as undeliverable by the postal service, we obtained updated addresses for these voters and re-mailed these letters to the voters' new address.

To date, we received a written response from 306 of these voters:

- 223 were U.S. citizens by birth/naturalization at the time they registered and there are no issues as to these voters. This was proved by presentation of naturalization or passport documents to our agency or a county board of elections.
- 4 voters, who are now U.S. citizens, registered to vote before becoming U.S. citizens. They will be removed as voters and will need to register anew. None of these individuals have voted.
- 79 registered voters, who are apparently not a U.S. citizen, signed a form requesting to be removed as voters. Of these voters, 67 have not voted and 12 have voted.

We have yet to receive a written response from 331 of the identified voters:

- 253 individuals have not responded to the two mailings. No mailing for these individuals has been returned to our agency as undeliverable from the U.S. Postal Service. 53 of these voters have voted. Our agency is in the process of having these voters removed from the voter registration rolls.
- 78 individuals had their letters returned by post office as undeliverable or they have communicated to us by some means other than a mailed response. A mailed response is needed to determine whether these individuals are a United States citizen and are properly registered. 18 of these voters have voted. Our agency is in the process of having these voters removed from the voter registration rolls.

We will send the voters who are being removed a notice of their removal. A voter registration form will be attached to the notice so that the person may reregister if they become a U.S. citizen at a later time. The form may also be used to re-register to vote in the event that the person was qualified to be registered to vote and they believe that they were removed from the voters rolls in error. Finally, this correspondence will clearly set out that it is illegal for non-citizens to register to vote.

All individuals who will be removed from the voter rolls as a result of this project, regardless of whether they voluntarily rescinded their voter registration, or failed to respond to our mailings, will be referred to the appropriate District Attorney and the U.S. Attorney's Office. As per our practice and the law, we will defer to the District Attorney and the U.S. Attorney on any decision to prosecute individual cases. We stand ready to cooperate with their offices as requested.

FILE EXHIBIT 2



U.S. Department of Justice

Civil Rights Division

TCH:RSB:RPL:LJM:tst:maf  
DJ 166-012-3  
2011-3092

Voting Section - NWB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

December 23, 2011

Mr. Gary O. Bartlett  
Executive Director  
State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27603

Dear Mr. Bartlett:

This refers to the establishment of procedures to verify the citizenship status of voter registration applicants who currently hold a Department of Motor Vehicles-issued legal presence driver's license or identification card, which is issued only to those individuals who submit documentation indicating that they are not a United States citizen at the time of their application; the voter registration procedure in the DMV database that precludes such individuals from registering to vote; the procedures for conducting a one-time verification of the citizenship status of those individuals who hold legal presence identification; and the one-time removal of registered voters, who hold a legal presence driver's license or identification card and have not responded to the state's written inquiry regarding their current citizenship status; for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your response to our October 11, 2011, request for additional information on October 24, 2011.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

T. Christian Herren, Jr.  
Chief, Voting Section

Received

DEC 29 2011

Campaign Finance

March 11, 2013

Chief of Voting Section  
Civil Rights Division  
Room 7254-NWB  
Department of Justice  
1800 G. St., NW  
Washington, D.C. 20006

**SECTION 5 SUBMISSION**  
**EXPEDITED REQUEST**

RE: Submission under Section 5 of the Voting Rights Act for Use of SAVE System to Confirm Non-Citizen Registrants/Voters and their Removal

Dear Voting Rights Section:

Enclosed is the preclearance in 2011-3092. That submission dealt with the removal of non-citizen voters from North Carolina voter rolls as a result of an early 2011 crosscheck of "legal presence" non-citizen NC Drivers License holders with our voter registration database. For your information, we had no further objections or request for hearings from those voters that we failed to hear from as to their removal from the voter rolls. That would indicate that these voters no longer resided at their North Carolina voter registration address or, knowing their unlawful status as non-citizen voters, remained silent as to our communication with them and their removal as voters.

Pursuant to the USDOJ suggestion, we applied to the U.S.C.I.S. SAVE program to obtain access to their database which could allow confirmation of the non-citizenship of a person if they were in the database. Our requests were initially rejected by SAVE until, the U.S. C.I.S. reversed its position last year and allowed voter registration inquiry as an approved use of the SAVE program.

We have now reached an agreement with the SAVE program as to the terms and conditions of the use of SAVE as to confirming the non-citizen status of certain suspected voters. That agreement and procedure is now being submitted for preclearance from your office. Following is the procedure and associated actions as to the removal/ determination of non-citizens suspected of being registered to vote or voting.

1. We obtain on regular basis information from the N.C. Department of Motor Vehicles (DMV) information on persons who are issued drivers licenses or State ID in a status of a non-citizen. We also may obtain credible information from the public and other sources as to a suspected non-citizen status of a voter. See enclosed March 11, 2013 e-mail from a



U.S.C.I.S. fraud investigator as an example of such other credible information we would follow up on.

2. In regards to the regular DMV data check, we cross check that data with our current voter registration rolls and create a list of possible non-citizens that are registered to vote.
3. Using the alien ID data number from DMV records or another credible source, we attempt confirm the non-citizen status of the suspected voter with SAVE.
4. Whether we have one source of non-citizen status through DMV, or two through DMV and SAVE conformation, we contact the suspected voter with the enclosed template letter and "Admission/Denial Form". Both this template letter and form have been extensively edited by both our agency and SAVE and are approved by both our agencies.
5. If we receive back from the registered person the "Admission/Denial Form" admitting they are not a citizen, we will remove them from the voter rolls immediately.
6. If we receive back from them the form or other correspondence that assert citizenship such as naturalization papers, we will confirm again with SAVE using that provided information and upon confirmation of citizenship close the matter leaving the citizen on the voter registration roll. If the alleged citizenship data is not confirmed by SAVE, we will continue our investigation into the citizenship status of the person.
7. Further action as to the investigation and removal of suspected non-citizens who are registered to vote or a request by the suspected voter for a hearing, will be by the means of a voter challenge procedure under Article 8 of the North Carolina General Statutes. That article is enclosed. This will allow the suspected non-citizen voter both due process and a hearing on the issue of their citizenship. It will also allow the suspected non-citizen voter and appeal to the Superior Court, if they so choose.
8. Upon a finding of non-citizenship in a challenge hearing, the suspected voter will be removed from the voter rolls, unless the decision of the hearing is appealed. Removal will be stayed, pending the final determination of the appeal by the Superior Court. Upon confirmation of non-citizenship status by the Superior Court, the voter will be removed from the voter rolls. There will be no stay of the removal pending an appeal of the Superior Court ruling to the N.C. Court of Appeals unless there is a court order issuing a stay.
9. Upon a finding by the Superior Court of citizenship, this agency and a county board of elections reserve the right to appeal that finding to the N.C. Court of Appeals. If we do not appeal, there will no action to remove the voter based upon non-citizenship.
10. Our use of the SAVE system will be based upon the draft Memorandum of Agreement which is enclosed. This draft agreement has been extensively edited by both our agency and SAVE and is approved by both our agencies.

The SAVE program desires preclearance of the above process and enclosed forms prior to the execution of the Memorandum of Understanding and implementing the above process.

The name, title, address, telephone number, facsimile number, and electronic mail address of the person making the submission is

Gary O. Bartlett  
Executive Director

North Carolina State Board of Elections  
P.O. Box 27255  
Raleigh, North Carolina 27611-7255  
Telephone: 919-733-7173  
Facsimile: 919-715-0135  
Email: [gary.bartlett@ncsbe.gov](mailto:gary.bartlett@ncsbe.gov)

*Additional contact:*

Don Wright, General Counsel  
North Carolina State Board of Elections  
Telephone: 919-715-5333  
Email: [don.wright@ncsbe.gov](mailto:don.wright@ncsbe.gov)

- (a) This submission is made by the North Carolina State Board of Elections.
- (b) The date on which these changes are effective upon preclearance.
- (c) These provisions apply state wide.
- (d) It is not anticipated, nor is it intended, that these provisions will have an adverse effect upon members of racial or language minority groups. Citizenship status is race neutral and a non-citizen being registered to vote is not in a protected class, but is in a possible criminal status.
- (e) There is no pending litigation concerning these provisions.
- (f) This is not a redistricting or an annexation.
- (g) The undersigned knows of no other matters relating to these provisions.

Please direct any further questions or inquiries to General Counsel, Don Wright. Thank you for considering this submission.

Sincerely,

Don Wright  
General Counsel

Cc; WilliamWard, SAVE Program



**JUNE  
2023**



# **MOTOR VOTER AT 30 YEARS**

*THE CAUSE AND BARRIER TO  
TO STOPPING NON-CITIZEN  
VOTING IN NORTH CAROLINA*

**MOTOR VOTER**