



**LEAGUE OF WOMEN VOTERS
OF IOWA**



**INTERFAITH ALLIANCE
OF IOWA**
PROTECTING FAITH AND FREEDOM



**American Friends
Service Committee**



To: Administrative Rules Review Committee Members

CC: Joe Royce, Legal Counsel, Administrative Rules Review Committee
Larry Johnson, Administrative Rules Coordinator, Office of the Governor

January 7, 2013

Re: Comments to ARC 0528C Proposed Rule 721—28.5 (“Noncitizen Registered Voter Identification and Removal Rule”) and Request for a Special Hearing

Honorable Senators and Representatives:

These joint comments are submitted on behalf of the ACLU of Iowa, LULAC of Iowa, the League of Women Voters of Iowa, the National Association of Social Workers, Iowa Chapter, the Interfaith Alliance of Iowa, the American Friends Service Committee, Midwest Region, and AFSCME Iowa Council 61. We are deeply concerned about the Secretary of State’s proposed rule 721—28.5 as amended in ARC 0528C.

We respectfully request that this committee act pursuant to its powers under section 17A.4(6),(7), and (8) of the Iowa Code, and take what action it finds appropriate to find objection to this rule, delay its effective date, and refer it to the General Assembly with the recommendation it be overcome by statute. This is needed to ensure that the Secretary’s proposal is properly vetted by Iowa’s duly elected representatives. The agency is free to file legislation for consideration by the General Assembly in mere days.

Our concerns are as follows.

This Voter Removal Rule is Not Authorized by Statute.

Under Iowa Code sections 47.1(1) and 17A.1(3), the Secretary of State is authorized only to promulgate rules that carry out the code. The Iowa legislature has specifically created the exclusive means of maintaining the voter registration lists. Iowa Code sections 48A.28 and 48A.30. For example, removal or cancellation is provided for in cases of death, incompetency, registering in another state, and felony conviction. In other words, the grounds for cancelling voter registration consist of those qualifications of eligible voters which are subject to change: people die, they may become incompetent, move, or can be convicted of infamous crimes. By contrast, citizenship and age of majority, the other two qualifications of eligibility, do not change once a voter acquires them. Rather, these are attested to at the time of registration.

The Secretary of State's Office is not the Proper Agency to Promulgate this Rule

The proposed action is not within the authority of the agency of the Secretary of State. Rather, under Iowa Code 47.8¹, the bipartisan Voter Registration Commission is the agency vested with rulemaking pertaining to the maintenance of the voter registration rolls.² Rules relating to voter registration must be “in accordance with the policies of the voter registration commission.” Iowa Admin. r. 821—1.2 (47).

The Use of the Federal SAVE System is Improper for Voters.

SAVE costs money; it is not “real-time”; and it does not provide comprehensive information about all immigrants or all citizens. SAVE is a complex federal program that accesses data through at least 14 separate federal agencies. The USCIS website shows that SAVE verification is a multistep process. While the initial electronic verification occurs in seconds, any necessary paper-based verification process takes up to 20 working days—once an agency already has documents at the ready to produce to verify a person’s status. Each of the layers of verification cost the state an additional fee and imposes burdens on the voter. Like any large aggregation of personal data that has been transcribed and manually entered at multiple times for multiple purposes, it is not free of errors and inconsistencies in either primary or secondary indicators. Primary indicators include information such as alien numbers, citizen certificate numbers, and I-94 numbers, while secondary indicators include biographical information, names, birth dates, and social security numbers. When errors occur, an in-person visit to a USCIS office with documentation should be arranged. Replacing documentation takes weeks to months, and costs hundreds of dollars. For example, replacing a lost or stolen certificate of naturalization costs \$345 and may take 6 months to a year.

¹ Iowa Code Section 47.8(1) provides:

A state voter registration commission is established which shall meet at least quarterly to make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office, and to promote interagency cooperation and planning.

² A recent example of the Voter Registration Commission exercising this authority comes from the most recently published Iowa Administrative Bulletin. The Voter Registration Commission—and not the Secretary alone—published ARC 529C, a rule to maintain, update, and remove mailing addresses from voter registration records. Similarly, the VRC would be the expected agency to promulgate *this type* of rule as well, so long as it was acting according to Iowa law.

The United States Citizenship and Immigration Services – the agency within the federal Department of Homeland Security that administers the SAVE system – has advised against using SAVE to maintain voter registration lists.

SAVE is used for verifying eligibility for benefits, such as the food assistance program, at the time of an application – this rule, notably, would flip that process. It would submit information to SAVE that was given by an individual to another agency, for another purpose, in the past, without the individual's knowledge or consent. Because of this time difference, inconsistencies or non-matches in the SAVE system are more likely than in the normal benefit application process, because a person may have acquired U.S. Citizenship in between obtaining a driver's license and having their data run through the system. Because one must have an alien number to be within the SAVE system, its applicability is limited to the class of eligible voters who have recently acquired U.S. Citizenship³, impacting Latinos disproportionately. The imposition of the special burdens of being run through the SAVE system and subsequently needing to verify citizenship on these voters is highly problematic.

In states that have used the SAVE system to identify noncitizens on their voter registration rolls – Colorado and Florida –less than one-one thousandths of one percent (0.001 percent and 0.004 percent, respectively) of the state's registered voters were non-citizens. One could reasonably expect that the use of the SAVE system will yield a similarly infinitesimal percentage of registered voters who are noncitizens in Iowa.

Those small results would only waste state money and staff time. Worse, the rule would intimidate many new U.S. citizens from registering in the first place. Because the penalties for registering fraudulently are so high – criminal sanctions and immigration consequences – it is likely most instances are due to confusion. Money would be better spent on public education and training at voter registration sites, such as driver's licensing stations, to educate voters on the eligibility requirements to register to vote.

The Rule is Still Too Vague, Poorly Written, and Will Harm Legitimate Voters.

The amount of time contemplated by the revised rule is still inadequate. As this committee heard during testimony on the first version of this rule on September 11, 2012, obtaining citizenship documents can far exceed the two 30 day windows provided for. Obtaining a replacement birth certificate can take up to 3 months, a replacement passport can take 6 weeks, obtaining a birth certificate from abroad to prove one's parents are U.S. citizens can take 8 months, and replacing a naturalization certificate can take 6 months to 1 year and costs hundreds of dollars. Those burdens will fall particularly hard on the subgroup of new U.S. Citizens affected by the rule who are women—only 66 percent of whom have access to any proof of citizenship with their current legal name—and who earn less than \$25,000/year—who are more than twice as likely to lack citizenship documents.⁴

The rule does not provide for actual notice by, for example, certified mail.

The characterization that an individual who receives a letter can request additional time to respond is misleading. The actual rule provides that adverse action – beginning with notification to

³ The Department of Homeland Security's Immigration Statistics records the number of people who became U.S. Citizens in Iowa in 2011: 1,840; in 2010: 1,858; in 2009: 2,198.

⁴ Fatma Marouf, *The Hunt for Noncitizen Voters*, 65 Stan. L. Rev. Online 66 (Oct. 31, 2012), available at <http://www.stanfordlawreview.org/online/hunt-noncitizen-voters>, citing BRENNAN CTR. FOR JUSTICE, CITIZENS WITHOUT PROOF: A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION 2 (2006), available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf.

county auditors -- can commence after just 60 days from the original mailing, even if the recipient indicates that more time is needed. ("In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under subrule 28.5(3) for a minimum of 60 days from the date the letter was originally mailed.") This is hardly a meaningful extension of time when no criteria for granting additional time or specific information about that process is provided.

The rule fails to impose time limits to ensure that the process would *begin, much less conclude*, within 90 days of a federal election as required by the 1993 National Voter Registration Law, nor does it appear to comply with state law requiring all challenges to people registered for more than 20 days to be filed within 70 days of an election, as is required under Iowa Code 48A.14(4).

Our concerns are amplified by the way this rule interacts with, but is silent on, the ongoing DCI investigation. The rule provides no limitation on how the Secretary will use information obtained pursuant to this rule – including responses to letters. The pattern and practice has been for the Secretary's office to provide voter information to the DCI agent hired with HAVA money to investigate election misconduct – including the list obtained from DOT records. The press has reported that DCI's tactics include showing up at people's homes late at night, with his gun showing, and threatening deportation. It is unknown if even voluntarily rescinding one's voter registration might trigger a criminal investigation. With no protection written into the rule, voluntary rescission could be considered an implicit admission of ineligibility, potentially triggering a criminal investigation. The mere possibility that registering to vote could expose a person, or their family, to criminal investigation will be sure to intimidate some new U.S. citizens.⁵

The Rule is Unnecessary.

The Secretary has said he is compelled to act in light of what he cites as evidence of a voter fraud problem. We point out that the list he cites is not of known noncitizen voters, but rather people who are registered to vote who were noncitizens at the time they got their driver's licenses. Many of those registered may have done so in confusion with no intent of voting, and most of those who voted likely acquired citizenship prior to that time. Three criminal charges – not convictions – charges, only underscores our contention that this is an irrational "solution" in search of a problem.

Conclusion

While our concerns about the rule are grave, no amount of revising by the Secretary will make promulgating this rule within his authority. If it wishes to do so, the agency may propose legislation to the General Assembly and make its case to Iowa's duly elected representatives. But it is our sincere view that it cannot lawfully precede on its own.

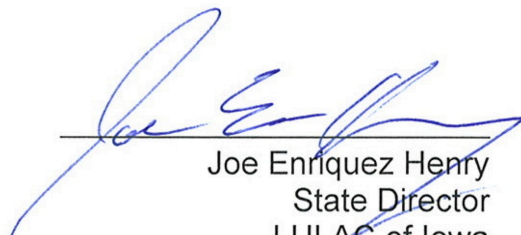
We have asked that the Secretary rescind the voter removal rule along with the complaint rule at this time. But short of that action, we respectfully request that members of this Committee act pursuant to their powers under 17A.4(6),(7), and (8) of the Iowa Code to uphold the law and protect Iowa voters.

⁵ The Secretary and his staff have on numerous occasions—to the U.S. Senate Judiciary Committee and to the press following the public hearing on January 3, 2013—stated that intimidation or suppression of eligible voters hasn't been evident since the office began its efforts. This statement ignores the reality that a judicial injunction was in place to prevent suppression prior to the General Election. As one of the elements of issuing a temporary injunction, a likelihood of success on the merits was shown.

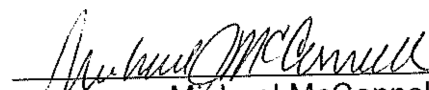
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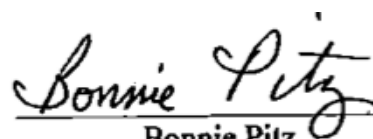
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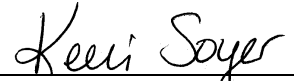
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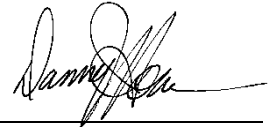
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