



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



**American Friends  
Service Committee**



**Public Comment in Regard to ARC 0528, published in the Iowa Administrative  
Bulletin on December 12, 2012**

December 28, 2012

Filed by email with:

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## Introduction

The American Civil Liberties Union of Iowa, the League of United Latin American Citizens of Iowa, the League of Women Voters of Iowa, the Iowa Chapter of the National Association of Social Workers, Interfaith Alliance of Iowa, and the American Friends Service Committee first filed joint written comments with the Secretary of State on August 28, 2012, objecting to the two proposed administrative rules published as ARC 0271C in the August 8, 2012 Administrative Bulletin. Those rules were promulgated both on an emergency basis, taking immediate effect, and through normal rulemaking. In the same document, we requested a formal hearing both with the Secretary of State (*hereinafter* Secretary), and with the Administrative Rules Review Committee. The hearing before the Iowa Administrative Rules Review Committee took place on September 11, 2012, at which time we made additional oral comments, as did members of the general public, and legislators. Shortly thereafter, the emergency rules were temporarily enjoined by an Iowa District Court to protect voters from a sufficient likelihood of harm while the lawsuit seeking permanent relief from the same rules is ongoing. On December 12, 2012, the Secretary formally amended the rules through normal rulemaking, published as ARC 0528 in the Iowa Administrative Bulletin, and finally set the date of the hearing on the proposed items for January 3, 2013 via ICN network at various locations throughout the state.

In light of the Secretary's filed amendments to the rules as originally noticed, we are submitting these additional written comments, which we will also present orally in abbreviated form at the January 3, 2013 hearing. Our original comments are attached as an addendum, and are incorporated through reference throughout these comments.

ARC 0528 proposes two amendments to the Notice of Intended Action published as ARC 0271C in the August 8, 2012 Iowa Administrative Bulletin. Item 1 proposes to rescind the rule 721-21.100, entitled "Complaints concerning violations of Iowa Code chapters 39 through 53, and item 2 proposes to amend the rule 721—28.5, entitled "Noncitizen registered voter identification and removal process" (*hereinafter* "Revised Voter Removal Rule")

### **Public Comment Re Item 1 (Proposed Rescission of the Voting Complaint Rule)**

We support the proposed rescission of rule 721-21.100 (39A.47), entitled "Complaints concerning violations of Iowa Code chapters 39 through 53" (*hereinafter* "Voting Complaint Rule").

We believe the rescission is necessary for the reasons stated in our public comments filed August 28, 2012 in response to 721-21.00, published on August 8, 2012 as ARC 0271. Primarily, the Voting Complaint Rule, as applied to complaints alleging voter fraud or otherwise attacking voters' qualifications, contravenes existing law and is inconsistent with legislative intent to protect voters from frivolous, erroneous complaints and disfranchisement.

We commend the Secretary of State's Office for proposing to rescind the Voting Complaint Rule. We urge that *both* rules be rescinded.

## **Public Comment Re Item 2 (Revised Voter Removal Rule)**

We appreciate that those changes that have been made to the proposed rule 721—28.5 are intended to address some of the concerns raised about the rule as initially noticed. However, many of those concerns previously identified have not been addressed; indeed, first and foremost, the issue of the Secretary's lack of legal authority to promulgate such a rule or act pursuant to it remains even if all other concerns were addressed. An act of the legislature is required in this case, and the Secretary cannot act alone. The Secretary must seek an act of the legislature, which is entirely within his means once the new legislative session begins January 14, 2013. Moreover, rulemaking authority governing the proper maintenance of the voter registration list lies with the Voter Registration Commission, not the Secretary alone. The Secretary may put before the Iowa General Assembly a departmental study bill proposing the action contemplated by this rule, but may not avoid the legislative process altogether. Furthermore, in light of the allocation of Help America Vote Act money to fund an Iowa Department of Criminal Investigation pursuit into acts of alleged voter fraud, including of non-citizen voting, new and heightened concerns about the way this proposed rule would function have emerged.

Each of these concerns is taken in turn below.

I. **The Secretary of State Continues to Lack the Necessary Statutory Authorization to Promulgate the Revised Voter Removal Rule, and Has Not Obtained the Necessary Directive from the Voter Registration Commission**

The Secretary lacks the requisite statutory authority to promulgate the Revised Voter Removal Rule. Because this rule dramatically alters the way that elections are run and how voters are challenged, legislative authority is needed before the Secretary can promulgate it. We would refer the Department to the substance of our comment as to the Secretary's lack of authority filed on August 28, 2012, which is unaffected by the proposed amendment and which we incorporate here by reference (See Addendum at 5-7). To wit, the legislature has provided for those means of maintaining the voter registration list by statute that are permissible, and use of the federal SAVE system to eliminate prospective noncitizens is not included, and therefore excluded. Similarly, under Iowa law the Voter Registration Commission ("VRC"), not the Secretary alone, is responsible for adopting rules, policies, and forms themselves, concerning the maintenance of the voter registration list, and the VRC has taken no action authorizing this proposed rule—in either its original or "relaxed" form. This rule requires full legislative debate and enactment, and falls outside the acceptable realm of agency rulemaking pursuant to statute. While the Secretary has "relaxed" the rule—in his own words—extending the period of time identified individuals have to reply to notice and warning letters, the power to enter into an agreement with the federal government to access SAVE for the purpose of verifying and purging Iowa's voter registration list is improper at this time. The Secretary must act pursuant to the policies adopted by the Voter Registration Commission, which has taken no action directing the Secretary to adopt this rule; the Voter Registration Commission must in turn act within the law, which provides for the exclusive means to maintain the list under Iowa law, and does not allow for use of DOT records and the federal SAVE database to identify alleged noncitizens.

## **II. Consultation with County Auditors Should Have Been Sought Prior to Promulgation of the Revised Voter Removal Rule**

In our August 28, 2012 comments, incorporated herein by reference (see Addendum at 8-9) we pointed out that the Secretary had failed to consult with Iowa county auditors before he filing it. The rules can be expected to impact the auditors' operations. For example, it will incur costs to counties, and affect voter registration and election day goals. Moreover, the county auditors can provide unique perspective, experience, and insight into the need for the Revised Voter Removal Rule, and how it should be implemented, if at all. Since the time of those earlier comments, despite amending the rules, we are unaware of any formal outreach was made to county auditors. We herein re-emphasize our recommendation that, as a matter of good policy making, the Secretary should rescind the Revised Voter Removal Rule entirely and seek information from county auditors. Even once the Secretary has consulted with the county auditors and incorporated their recommendations, he must first seek passage of a law by the Iowa General Assembly authorizing the use of SAVE to identify and remove alleged noncitizens from our voter registration rolls.

## **III. The Revised Voter Removal Rule Continues to Provide Inadequate Due Process, Contains Unnecessarily Vague Language, and Provides Inadequate Guidance as to How the Proposed Purge of Noncitizen Voters will Interact with the ongoing DCI Investigation<sup>1</sup>**

Under the Revised Voter Removal Rule, the Secretary will give the individual accused of noncitizen voter registration 60 days to respond before the Secretary begins to take action against him or her. (The language of 28.5(3)(b)(1) is unclear, but seems to state that action will commence 30 days after the second notice, providing for 60 days total, and the Secretary's office has indicated 60 days response time is intended in public statements.)

Compare this time frame for the amount of time the Governor's Office gives itself to process applications from Iowans who have completed a criminal sentence and wish to have their voting rights restored: 6 months. In our August 28, 2012 comments, incorporated herein by reference (see Addendum 1), we pointed out how long it can be expected to take for some U.S. Citizens to gather necessary documentation to prove their citizenship. Thus, 60 days may be insufficient to ensure an opportunity to receive notice and contemplate a response prior to challenge procedures commencing.

Additionally, one option the rule gives recipients is to inform the Secretary that "they need more time" before responding, implying that they can request an extension before making a final decision. However, whether the individual responds immediately and requests more time or never even opens the notice, the rule states that the Secretary can commence action against them within 60 days of the original mailing. What, then, is the purpose of requesting more time?

The rule assumes that the intended recipient gets the notice sent to her in the first place, but the rules don't even specify how the Secretary will determine the challenged voter's address. Short of sending

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<sup>1</sup> Since we believe that the Secretary does not have the authority to pursue this rule it is not incumbent upon us to rewrite the rule for him. However, this section provides a few of the myriad specific examples in which the current rule is poorly conceived and written.

the notice via certified mail, which the revised rule does not propose, there is no way of ensuring that the recipient receives notice of this document. This is unacceptable, because the letter may result in significant civil and potentially criminal legal repercussions. We insist that the Secretary lacks authority to promulgate the rule at all. However, assuming for the sake of argument he does possess such authority, at a minimum the rule should require that the notice be sent by **certified mail**, and that the response period **begin on the date that the notice is received**, not sent. Nor does the rule state that the notice will advise the recipient to seek legal counsel, a necessary step for anyone in this position to understand their rights and the potential repercussions of failing to respond.<sup>2</sup> The letter should make this recommendation. The response time should be lengthened to allow for individuals to gather documents, and consult with counsel, if desired.

Even if the individual receives notice and begins to prepare immediately, it can often take months to get the necessary copies of citizenship documentation from the federal government. For example, the process of obtaining a replacement birth certificate can take up to 3 months in some states; the processing time for the Department of State to provide a replacement passport may be expedient, but in some cases may take 4-6 weeks; the process of replacing a birth certificate from abroad, to prove that both of one's parents are U.S. citizens, for example, may take as long as 8 months; the process for replacing a naturalization certificate if it is lost, stolen, or otherwise misplaced, is as long as 6 months, and may exceed a year in some cases.<sup>3</sup>

These due process concerns are all heightened by the Secretary's ongoing collaboration with the Department of Criminal Investigation (DCI). **Consider the case of an individual who, upon receiving this notice and reading the intimidating language, decides it's safer to voluntarily rescind their registration than to risk the consequences of a failed assertion of their qualifications. Can even that action be used against them in a criminal prosecution as an implicit admission of wrongful registration?** Indeed, given the Secretary's recent coordination with DCI, it seems entirely likely that he will hand over all responses (or names of nonresponses) of the letters to a DCI agent for criminal investigation, whether recipients answer in the affirmative or the negative to allegations.<sup>4</sup> No matter what happens, criminal charges are at play, and every possible action or inaction could result in criminal consequences. Whether the individual never receives notice, receives it and chooses not to respond, voluntarily withdraws her name from the rolls, or attempts to prove her eligibility at a hearing, the possibility of criminal charges is always threatened.

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<sup>2</sup> For example, as discussed below, what the effect of any answer or non-answer to the letter(s) may be in terms of triggering an investigation by DCI into voter fraud, defending against that charge, and potential criminal liability; on the civil side, what effect any answer may have in terms of defending one's right to vote.

<sup>3</sup> See Affidavit of Della Arriaga, in Addenda.

<sup>4</sup> The DCI investigation into alleged noncitizen voters is based on the list the Secretary's office generated by comparing the Iowa Department of Transportation records of lawfully present alien drivers with the voter registration list. Additionally, the Secretary's new "voter fraud hotline" (phone and email) appears to be a means to do initial fact-finding/case-screening for the DCI investigation. See Addendum 2.

This threat is significantly heightened by the Secretary's choice to send a DCI agent out to investigate the same individuals who would receive notices under the Revised Voter Removal Rule. The intimidating nature of this action and its chilling effects on the individuals, their families and communities, and on anyone who might receive such notice cannot be understated. According to a Davenport woman who was visited by the designated DCI agent who is being paid with HAVA money to pursue alleged voter fraud, a man in a dark suit showed up on her doorstep late one evening wearing a badge and gun and began to interrogate her.<sup>5</sup> He began asking questions about her personal life and did not tell her the reason for his interrogation until she asked what was going on, at which point the agent finally told her she was being investigated for voter fraud and then threatened her with deportation, saying that "if you vote this year in November, we're going to ship you back."<sup>6</sup> Upon hearing this, the Scott County Auditor noted the obvious concerns: "I'm concerned when anyone is fearful and especially knocking on someone's door at nine o'clock at night . . . maybe a single woman, not sure who's there, what their rights are, who they should call. All those things are frightening to individuals."<sup>7</sup> After asking how this kind of behavior intimidates other potential voters, the Auditor summarized: "We auditors want more than anyone to prevent illegal voting, but we also don't want to scare people away from the polls."<sup>8</sup>

This investigation is funded and overseen by the Iowa Secretary of State's office. If the Secretary truly wishes to avoid unnecessary voter intimidation, this proposed rule is thus incompatible with the DCI investigation to unearth and prosecute voter fraud.

**IV. Using the Iowa Department of Transportation and U.S. SAVE system to search for foreign national voters is highly problematic and unreliable.**

The Secretary of State has often referred to the Systematic Alien Verification for Entitlements (SAVE) program as being able to provide "real-time" information about immigration status.<sup>9</sup> The rules themselves refer to SAVE as "a database." Neither of those statements is true.

SAVE is a system operated by the U.S. Citizenship and Immigration Services (USCIS) which is intended to verify that a person has the immigration status which her documents indicate, or that she has provided, for the purposes of determining the immigrant's eligibility for government benefits and licenses.

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<sup>5</sup> For the full account of the DCI agent's questionable tactics and their intimidating effect, see <http://www.kwqc.com/story/19667851/davenport-woman-targeted-by-iowa-voter-fraud-investigator>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> For example, see the Secretary of State's comments at <http://www.radioiowa.com/2012/08/17/secretary-of-state-attorney-general-defend-process-for-removing-illegal-voters-audio/>.

It is an electronic, pay-per-use, fee-based system.<sup>10</sup> SAVE does not indicate whether a person is eligible for a particular benefit; it only verifies information contained in immigration records. Further, SAVE does not contain information on U.S. citizens born in the U.S. (by far the largest group of eligible voters), nor does it contain any information on undocumented immigrants.

Save is used as a support system for verifying eligibility for benefits or services at the time an application is initially filed.<sup>11</sup> The proposal to use SAVE to identify noncitizens registered to vote flips that process. That's because any queries to the SAVE system would likely be based on immigration information in a state's records that have been previously submitted for other purposes (here, for the purposes of obtaining a driver's license). That means that the rule proposes that the Secretary of State request verification based on information provided by an individual to another agency, for another purpose, in the past, without the individual's knowledge or consent, and without informing the individual that the verification is taking place. This after-the-fact verification may imperil the right to vote of a person who has satisfied all of the requirements of the voting registration process, and will impose special burdens on some U.S. Citizens to prove their eligibility to vote. For example, a naturalized U.S. Citizen who obtained a driver's license before she became a citizen will be singled out for verification and possible loss of the right to vote, not to mention potential criminal investigation or prosecution, unless she meets special burdens not required of all other voters.

SAVE is an electronic system used to check DHS's immigration databases and records, but is not itself a database or list. DHS officials had previously declined to allow the use of SAVE for the purpose of verifying the citizenship or immigration status of registered voters because the information is "incomplete and does not provide comprehensive data on all eligible voters."<sup>12</sup>

Because of the time required to update the system, SAVE will still list new citizens as non-citizens for a period of time after they obtain citizenship.<sup>13</sup> A naturalized citizen or a person who has obtained a certificate of citizenship from USCIS (or its predecessor) would have a record in immigration files. But a native born citizen would not have such a record.

Where other states have used SAVE to identify noncitizen voters, they have yielded very small numbers. "In Colorado, an initial list of 11,805 suspected noncitizens on the voter rolls has shrunk to 141,

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<sup>10</sup> See information about cost to state agencies at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=cd32c2ec0c7c8110VgnVCM1000004718190aRCRD&vgnnextchannel=cd32c2ec0c7c8110VgnVCM1000004718190aRCRD>.

<sup>11</sup> See SAVE at the USCIS website here: <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=1721c2ec0c7c8110VgnVCM1000004718190aRCRD&vgnnextchannel=1721c2ec0c7c8110VgnVCM1000004718190aRCRD>.

<sup>12</sup> See <http://www.suntimes.com/news/Washington/13784760-452/feds-give-florida-access-to-list-of-resident-noncitizens.html>.

<sup>13</sup> See Ross, Voter Roll Purges Could Spread to at Least 12 States, *available at* [http://www.huffingtonpost.com/2012/07/31/voter-roll-purge\\_n\\_1721192.html](http://www.huffingtonpost.com/2012/07/31/voter-roll-purge_n_1721192.html).

which amounts to .004 percent of the state’s 3.5 million voters. Likewise, in Florida, a list of 180,000 suspected noncitizens on the rolls has shrunk to 207, which accounts for .001 percent of the state’s 11.4 million registered voters”<sup>14</sup> Many of the individuals in question did not even know they were registered to vote (and never would have voted) or were actually U.S. citizens legally entitled to vote.

Thus, acting according to this proposed rule, the Secretary of State is likely to scare thousands of qualified voters away from the polls. He will also cause significant expense to the state in administering the rule – both in staff time and resources. Yet the rule can be expected to yield only infinitesimal numbers of noncitizens who have intentionally registered to vote and will in fact vote. And worse, he may erroneously sweep up qualified, U.S. citizen voters.

SAVE is not a comprehensive, up-to-date list of who is a citizen and who is not. There is no national database of citizens that states can check to prove U.S. citizenship. The debate whether Iowa should enter into a memorandum of agreement with the federal government to access SAVE to verify voters are U.S. citizens may be worth having; however, it is a debate to be held among Iowa’s duly elected Representatives and Senators through the legislative process, if they decide to pursue the matter. It is not a debate to be held within the agency of the Secretary of State alone.

**V. The Revised Voter Removal Rule Remains Likely to Chill Eligible Iowa Voters from Exercising their Fundamental Right to Vote, with Disparate Impact on Latinos and New Citizens, Despite No Proven Significant Voter Fraud**

The comments pertaining to this objection as previously filed on August 28, 2012 are incorporated herein (see Addendum 1 at 12-14) comments. Additional comments are as follows.

This Rule continues to raise serious equal protection and due process concerns, as well as possible violations of other federal and state laws. The Revised Voter Removal Rule proposed in Item 2 allows the Secretary to rely on driver’s license files from the Iowa Department of Transportation without setting any concrete standards, guidelines, or policies regarding the uniform and fair acquisition and storage of records. Nor does it set notification and consent requirements for DOT applicants to authorize the use of the information they provide to verify citizenship status, at a later date, for purposes of voter registration list maintenance.

It is noteworthy how this problem—a lack of authority for the Secretary to do rulemaking governing DOT’s participation in voter list maintenance; and a lack of authority for the DOT to make rulemaking governing itself for voter list maintenance—underscores that the legislature, and not the Secretary, should be making these critical determinations.

The Secretary would also enjoy nearly unfettered discretion as to the manner and frequency of voter roll purges: “The match may be completed as often as the secretary of state deems necessary, but no

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<sup>14</sup> See the Immigration Policy Center’s Fact Sheet on SAVE at <http://www.immigrationpolicy.org/just-facts/systematic-alien-verification-entitlements-save-program-fact-sheet>, citing [http://www.huffingtonpost.com/2012/09/25/voter-purges-republicans\\_n\\_1912190.html](http://www.huffingtonpost.com/2012/09/25/voter-purges-republicans_n_1912190.html).

more than once a quarter.” The rule itself makes no reference to federal law prohibiting such action within 90 days of an election. Nor does the rule provide, as it should, limitations that letters be sent no later than 150 days prior to an election even under the proposed 60 day scheme, so that the process could normally be completed prior to the 90 day prohibition.

The Revised Voter Removal Rule, especially when coupled with the DCI investigation, creates a climate of fear and confusion around voting. This climate of fear and confusion, especially in light of the unlikelihood of actually eliminating would-be noncitizen voters, should be sufficient to rescind this rule in its entirety.

**VI. The Rules Purport to Address a Problem of Voter Fraud that is Unsupported by Evidence**

The comments pertaining to this objection as previously filed on August 28, 2012 are incorporated herein (see Addendum 1 at 11-12). Additional comments are as follows.

It should be noted that of the 6 criminal charges that have been brought, at least 3 are against individuals who were apparently confused as to their eligibility, and 2 are against persons whose current location apparently is unknown and cannot therefore provide information as to their knowledge. Moreover, none have resulted in a conviction. It is misleading and inappropriate for the Secretary to characterize these criminal prosecutions as equivalent to convictions proving noncitizen voter fraud, as he has done in the press and even at a hearing on voting rights held by the U.S. Senate Judiciary Committee in December 2012. Criminal charges are, by definition, merely accusations and not proof of wrongdoing. Moreover, a mere 6 cases, even if they were to result in convictions, only emphasize the lack of a meaningful noncitizen voter fraud problem in the state.

**CONCLUSION**

For the foregoing reasons, we, the undersigned organizations, insist that *both* rules be rescinded in both their original and amended forms.

Respectfully,



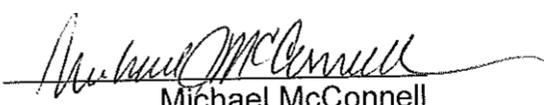
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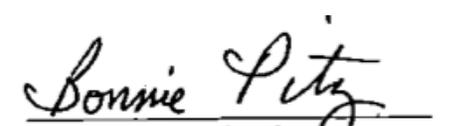
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# 0528 ARC Comments Addendum 1



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



**American Friends  
Service Committee**



## **Public Comment in Opposition to Agency Action Published as ARC 0271C and Request for Hearing**

August 28, 2012

Filed with the Following Individuals:

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## **Request to the Secretary of State for a Hearing**

We, the undersigned organizations, each consisting of an association of 25 or more persons, file this formal comment objecting to Iowa Admin. Rules 721--28.5 (47, 48A) and 721—21.100, which were noticed as ARC 0271C in the Iowa Administrative Bulletin published on August 8, 2012 (Volume XXXV, Number 3). Pursuant to Iowa Code 17A.4(1), these organizations demand an oral presentation hereon. They request a formal hearing with the Iowa Secretary of State.

## **Request to the Administrative Rules Review Committee for a Hearing**

Further, we, the undersigned organizations, request that the Administrative Rules Review Committee review the proposed action published as ARC 0271C under 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

## **Grounds for Comment Objecting to Rules**

We, the undersigned organizations, object to the proposed rulemaking noticed as ARC 0271C on the following seven (7) grounds:

- I. The Secretary of State Lacks the Necessary Statutory Authorization to Promulgate the Registered Voter Removal Rule, and Has Not Obtained the Necessary Policy Guidance from the Voter Registration Commission;
- II. The Secretary of State lacked authority to promulgate the Voting Complaint Rule, which is in Conflict with Existing Iowa Law;
- III. Consultation with County Auditors Should Have Been Sought Prior to Promulgation of These Rules;
- IV. The Rules Are Vague, and Afford the Secretary Unfettered Discretion;
- V. The Rules Purport to Address a Problem of Voter Fraud that is Unsupported by Evidence;
- VI. The Rules Provide Inadequate Due Process;
- VII. The Rules Are Likely to Chill Eligible Iowa Voters from Exercising their Fundamental Right to Vote, with Disparate Impacts on Latinos and New Citizens.

Each of these grounds is discussed in detail below.

## **Introduction: Description of Rules**

On July 20, 2012, the Secretary of State promulgated two rules on an emergency basis—Admin r. 721.100 (39A, 47) and Admin r. 721—28.5 (47, 48A), published as ARC 0272C in the Iowa Administrative Bulletin Volume XXXV Number 3 on August 8, 2012. On the same date, he initiated regular rulemaking procedures for the same rules. Notice of the Rules to be promulgated through regular rulemaking were published as ARC 0721C in the same Iowa Administrative Bulletin, Volume XXXV Number 3 on August 8, 2012.

While a lawsuit has been filed challenging the Secretary of State's use of emergency rulemaking procedures to promulgate these two rules, these comments are limited to objecting to the substance of the rules themselves, in response to the regular rulemaking process noticed as ARC 0721C.

The first rule, 721—21.100 (39A, 47), is entitled “Complaints concerning violations of Iowa Code chapters 39 through 53” (*hereinafter* “Voting Complaint Rule”). The Voting Complaint Rule provides that “A person who wishes to file a complaint concerning an alleged violation of any provision of Iowa Code chapters 39 through 53 shall: (1) File a written complaint with the secretary of state, on the form provided by the secretary of state's office; (2) Include the complainant's signature and contact information. Complaints lacking this information may be dismissed by the secretary of state's office without further investigation.” Iowa Admin. Code r. 721—21.100 (a). The rule further specifies that the complaint will be “forwarded to the appropriate Iowa agency for further investigation and follow-up as deemed necessary.”

The second rule, 721—28.5 (47, 48A), is entitled “Noncitizen registered voter identification and removal process” (*hereinafter* “Registered Voter Removal Rule”). The Registered Voter Removal Rule requires the Secretary of State, as state registrar of voters, to “periodically engage in obtaining lists of foreign nationals who are residing in Iowa from a federal or state agency,” which “may be matched against the voter registration records to determine likely matches based on predetermined search criteria.” Iowa Admin. Code r. 721—28.5(1). The federal or state agency lists intended are unspecified in the rule. The Secretary has indicated on numerous occasions he has already obtained Iowa Department of Transportation information to generate his list of suspected foreign national voters. After producing such a list, the rule provides for the Secretary to “turn the list of likely matches over to the appropriate Iowa agency” for additional follow-up and a determination as to whether the voter registration record is an exact match to an individual listed on the foreign national file. Iowa Admin. Code r. 721—28.5(2). As there is no Iowa agency presently tasked with this role, it is expected that the Secretary of State will likely also take on the responsibility for citizenship verification. The regulation further provides that the Secretary of State must then determine whether the registrant has obtained

citizenship status subsequent to the date in the record. Iowa Admin. Code r. 721—28.5(2). No procedure is specified for making this determination, although the Secretary has indicated to the press that he intends to enter into a memorandum of agreement with the federal government to access the SAVE database through the Department of Homeland Security.

Upon the Secretary's determination that a registered voter matches a name on a list provided by the unidentified source, the Secretary will send notice to the voter that the Secretary has obtained information that the registered voter may not be a citizen and may be illegally registered to vote, advising the individual that illegally registering to vote is a class D felony under Iowa law, and that the registrant should accordingly cancel his or her voter registration, or respond to the notice within 14 days. Iowa Admin. Code r. 721—28.5 (47, 48A). Failure to respond within the 14 day time frame will result in commencement of a challenge to the voter's registration as set forth in Iowa Code § 48A.14. *Id.* In addition, failure to respond within 14 days will result in the Secretary of State notifying the county registrar that the individual may be "illegally registered to vote." Iowa Admin. Code r. 721—28.5(3)(b). Failure to respond will result in removal through Iowa's voter challenge procedure set forth in Iowa Code §§ 48A.14–16.

Iowa Code §§ 48A.14–16 provide that upon receipt of a valid challenge, the commissioner shall notify the challenged registrant within five working days of the date, time, and place of a hearing on the matter to be held at least twenty and no more than thirty days from the commissioner's (the county commissioner of elections, see Iowa Code § 48A.3) receipt of the challenge. Iowa Code § 48A.15. At the time of the hearing, the commissioner shall accept evidence on the challenge from the challenger (in this case, the Secretary of State) and the challenged registrant, and either reject the challenge or cancel the registration of the challenged registrant. Iowa Code § 48A.16. A single appeal to the district court in the commissioner's county is provided for in any voter challenge procedure. *Id.*

The Registered Voter Removal Rule further provides that failure to respond within 14 days will trigger the following two measures to be taken against the alleged noncitizen registered voter. First, if a county registrar receives notice from the Secretary of State for a registrant who has an active absentee ballot request, the county commissioner of elections shall attach the notice from the secretary of state's office to the registrant's absentee ballot affidavit envelop, if returned, to the auditor's office, and the county commissioner of elections is required to instruct precinct election officials to challenge the voter's absentee ballot. Iowa Admin. Code r. 721—28.5(3)(d). Second, if the county registrar receives notice from the Secretary of State for a registrant who has a previous voting history, the county commissioner of elections is required to print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes still in their

custody, make a copy of the notice received by the county registrar, then forward all those documents to the secretary of state within 30 days. Iowa Admin. Code r. 721—28.5(3)(e).

## Discussion

### **I. The Secretary of State Lacks the Necessary Statutory Authorization to Promulgate the Registered Voter Removal Rule, and Has Not Obtained the Necessary Policy Guidance from the Voter Registration Commission**

The Secretary of State (*hereinafter* Secretary) lacks the requisite statutory authority to promulgate the Registered Voter Removal Rule. Because this rule dramatically alters the way that elections are run and how voters are challenged, legislative authority is needed before the Secretary can promulgate it. Iowa has a long history of free and fair elections. In fact, the legislature has explicitly provided that “It is the intent of the general assembly to facilitate the registration of eligible residents of this state through the widespread availability of voter registration services. This chapter and other statutes relating to voter registration are to be liberally construed toward this end.” Iowa Code § 48A.1. Because, as discussed throughout these comments, the likely effect of these rules is to *hinder* voter registration and access to voting by eligible, qualified Iowa resident voters, especially those who are new U.S. citizens, the Secretary’s intentions as indicated by these rules merit, and require, full legislative debate and enactment, and fall outside the acceptable realm of agency rulemaking pursuant to statute.

In promulgating the Registered Voter Removal Rule, the Secretary cited his authority as state commissioner of elections under Iowa Code § 47.1 (2011). However, the Voter Registration Commission (“VRC”), not the Secretary of State, is vested with the authority to promulgate policies and rules to maintain and purge the voter registration list in Iowa. Because the VRC has not authorized the Secretary’s actions in this case, he has no authority to act by fiat alone.

By statute, the Secretary is the state commissioner of elections and is charged to “prescribe uniform election practices and procedures.” Iowa Code § 47.1(1) (2011). Further, the Secretary is the state registrar for voters, and is responsible for preparing, preserving and maintaining voter registration records. Iowa Code § 47 (2011). However, the Code does not give the Secretary authority to edit or purge the voter registration records, nor does it grant him the ability to create rules to do so. See Iowa Code § 47 (2011). Instead, the legislature expressly granted the power to adopt new rules to the Voting Rights Commission. Iowa Code § 47.8(1) (2011) (the Voting Rights Commission was created to “make and review policy, adopt rules, and establish procedures to be followed by the registrar in discharging the duties of that office.”). Put simply, the Voting Rights Commission adopts the policy rules governing registration, and the Secretary (in his

capacity as registrar) enforces those rules. The Secretary can only exercise his registrar powers “in accordance with the policies of the voter registration commission.” Iowa Admin. Code r. 821—1.2 (2011). As the state commissioner of elections, the Secretary serves as chairperson for the VRC. Iowa Code § 47.8(1)(c) (2011). However, he is not the *whole* commission. The VRC consists of four members: the state commissioner of elections, and the chairpersons of the two state political parties whose candidates for either President of the United States or for Governor in the most recent general election received the greatest number of votes, or their designees, and a person appointed by the president of the Iowa State Association of County Auditors. Iowa Admin. Code r. 821—1.1 (2011). A quorum of the commission is four members, and no official action may be taken in the absence of a quorum. *Id.* r. 821—1.3(7) (2011). To prevail, a motion, declaratory ruling, or ruling in a contested case must receive the votes of a majority of commissioners present and voting. *Id.*

The Administrative Rules have already created a process for ensuring that only eligible applicants have their voter registration applications approved. Iowa Admin. Code r. 821—15 (2011). The Administrative Rules also delineate several instances in which the Secretary is granted authority to compare this list to other specified lists to ensure that ineligible voters do not remain registered: comparing Iowa’s voter registration lists with voter lists of other states to prevent duplicate voting (Iowa Admin. Code r. 721—28.3(3); comparing the list with a list of convicted felons (Iowa Admin. Code r. 721—28.4(1)). These examples show that the legislature knows how to give the Secretary authority to remove ineligible voters from the list and could have granted him such authority if provided with sufficient and justifiable reasons to do so.

The absence of an explicit prohibition on the Secretary’s authority to purge the voter rolls of suspected foreign nationals in the manner the Rule contemplates is not equivalent to authorization for him to do so. Such a system would require that the legislature anticipate and codify every potential abuse of power in order to prevent the Secretary from exceeding his authority. Because the Secretary clearly did not possess the authority to unilaterally act on behalf of the legislature, including the administrative rules review committee, and VRC, to vest himself with the authority to promulgate these rules, the Secretary should rescind them at once.

The Secretary is charged with being the state’s voter registrar, but rules and regulations regarding voter registration are solely the purview of the VRC. Iowa Code § 47.8(1); Iowa Admin. Code r. 821—1.2. The Registered Voter Removal Rule usurps the Iowa legislature’s authority, which has specifically codified the exclusive means of maintaining voter registration lists. Iowa Code §§ 48A.28, 48A.30. The VRC has the responsibility to “make and review policy, adopt rules, and establish procedures to be followed by the registrar [i.e. the secretary of state acting in his capacity as the state

registrar of voters] in discharging the duties of that office. . . .” *Id.* § 47.8 (2011). The Secretary is charged with being the state’s voter registrar, but rules and regulations regarding voter registration are solely within the purview of the VRC. Iowa Code § 47.8(1); Iowa Admin. Code r. 821—1.2.

Thus, rules pertaining to the purging of voter registration lists should be established by the VRC, not the Secretary of State, and only pursuant to an act of the Iowa legislature. There has been no policy determination or other action by the VRC authorizing the Registered Voter Removal Rule’s promulgation, nor an act of the Iowa legislature authorizing the Rule, and therefore, the Secretary exceeded his statutory authority.

## **II. The Secretary of State lacked authority to promulgate the Voting Complaint Rule, which is in Conflict with Existing Iowa Law.**

The Voting Complaint Rule, as applied to complaints alleging voter fraud or otherwise attacking voters’ qualifications, similarly contravenes existing law and is inconsistent with legislative intent to protect voters from frivolous, erroneous complaints and disfranchisement.

An agency may not adopt rules that are contravened by statute. *See, e.g., Barker v. Iowa Dep’t of Transp., Motor Vehicle Dep’t*, 431 N.W.2d 348, 350 (Iowa 1988) (holding the Iowa Department of Transportation lacked authority to promulgate rule establishing a “margin of error” for breath alcohol concentration test, when statute failed to designate one or authorize Department to make this designation); *S & M Fin. Co. Fort Dodge v. Iowa State Tax Comm’n*, 162 N.W.2d 505, 510 (Iowa 1968) (“The commission itself is powerless to adopt rules inconsistent with, or in conflict with, the law to be administered.”). The General Assembly has already created the exclusive mechanism for challenging a registered voter’s registration. Iowa Code § 48A.14 (2011). The legislature has implemented a system under which any registered voter may challenge the registration of another voter in his or her county by submitting a written statement to the commissioner. Iowa Code §§ 48A.14(1), 49.79 (2011). Notably, the legislature sets a very high bar for challenging the registration of another voter: the individual must swear and affirm that all information he or she alleges is true, and must risk prosecution for an aggravated misdemeanor for knowingly including false information in the challenge. Iowa Code § 48A.14(3) (2011). By creating the risk of criminal prosecution for falsely accusing a voter of registering illegally, the legislature demonstrated an intent to protect qualified Iowa voters from frivolous challenges to their voting rights.

The Voting Complaint Rule, as applied to complaints of alleged voter fraud or challenges to a voter’s qualifications, directly undermines Iowa Code § 48A.14 (2011).

Rather than implementing Iowa Code §§ 39–53 (2011), it contravenes it. The Voting Complaint Rule provides no safeguard against frivolous complaints.<sup>1</sup> Unlike the process for challenging another Iowan’s right to vote enacted by the legislature, the Voting Complaint Rule has no requirement of an oath or penalty for false filings. Moreover, non-frivolous complaints have no guarantee of further process or action by the agency, which is left with unfettered discretion to “forward for further investigation and follow-up as deemed necessary.”

The Voting Complaint Rule, while not only unnecessary given the provisions of Iowa Code § 48A, actively and unquestionably undermines the language and requirements set forth in Iowa Code § 48A as applied to voter challenges. Because it directly undermines the statutory standard for challenges to voter eligibility, the Secretary exceeded his statutory authority to make rules implementing Iowa Code §§ 39–53 (2011).

### **III. Consultation with County Auditors Should Have Been Sought Prior to Promulgation of These Rules**

County auditors in Iowa were apparently surprised by these rules—as they were to learn that a special DCI agent had been repurposed from Major Crimes to investigate voter fraud based on Department of Transportation information alone. *See No Evidence for Voter Fraud Obsession*, DES MOINES REGISTER, Aug. 16 2012, available at [http://www.desmoinesregister.com/article/20120817/OPINION03/308170035/1024/basu/?o\\_dyssey=nav%7Chead](http://www.desmoinesregister.com/article/20120817/OPINION03/308170035/1024/basu/?o_dyssey=nav%7Chead). There are some obvious impacts of the rules to local registration and election administration efforts, including the expense and staff time that will need to be expended in pursuing the evidence collection and challenge procedures set forth in the Registered Voter Removal Rule. Historical evidence shows that the Rules are far more likely to impede the voter registration efforts and expansion of voting accessibility for

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<sup>1</sup> An open records request filed by the Associated Press showed that despite his efforts, the Secretary of State has yet to uncover proven instances of the voter fraud problem in Iowa. Ryan Foley, *Iowa elections chief seeks to prove voter fraud*, ASSOCIATED PRESS, July 14, 2012, , available at <http://www.sfgate.com/news/article/iowa-elections-chief-seeks-to-prove-voter-fraud-3707053.php>. (“I would like to emphasize that the individuals reported to our office were not found to have participated in any intentional wrongdoing that could be classified to the level of ‘fraudulent’,” Angela Davis, the staff attorney in Schultz’s office, wrote to AP, which asked for records related to all voter fraud investigations.”) The Secretary of State said other instances that were not disclosed had been sent to the Iowa Division of Criminal Investigation and local prosecutors for investigation. *Id.*

On Wednesday, August 9, 2012, the Secretary of State informed Iowa’s county auditors that he had assigned an Iowa Division of Criminal Investigation agent Daniel Dawson to a two-year term in the Secretary of State’s office to investigate voter fraud. *DCI agent investigating 2,000 Iowa voters*, ASSOCIATED PRESS, Aug. 10, 2012, available at <http://www.kcci.com/news/central-iowa/DCI-agent-investigating-2-000-iowa-voters/-/9357080/16052502/-/xm1vdo/-/index.html>. County auditors related to the press that Dawson had already indicated at least 2,000 registered Iowa voters were under investigation. *Id.*

auditors than catch fraudulent voters. Given the novel and unprecedented undertakings laid forth in these Rules, the Secretary of State, as a matter of good policy making, should rescind the rules and first seek information from county auditors on the effects they anticipate these rules in counties across Iowa.

#### **IV. The Rules Are Vague, and Afford the Secretary Unfettered Discretion**

The rules as written are too vague and lack safeguards to ensure against the erroneous deprivation of the fundamental right to vote.

The Voting Complaint Rule purports to authorize the Secretary of State to receive and take action on complaints that a voter is disqualified, among other things. The Rule is improperly vague, and affords the Secretary wide latitude to selectively enforce it. While the Rule provides that the Secretary may decline to investigate or take action on anonymous or unsigned complaints, he may also pursue them. Iowa Admin. Code r. 721—21.100 (a) (“Include the complainant’s signature and contact information. Complaints lacking this information may be dismissed by the secretary of state’s office without further investigation.”). Similarly, the Rule provides no guidance as to how the Secretary will evaluate claims, which Iowa agencies will be tasked for which variety of complaint, or what factors will be used to determine the “investigation and follow-up...deemed necessary.” *Id.*

The Registered Voter Removal Rule purports to authorize the Secretary of State to use *any state and federal lists he elects*, because they’re not specified, to identify people he suspects of voter impersonation fraud, and start a summary and unfair process to remove them as voters. While the Secretary’s statements to the press indicate that he has already used Iowa Department of Transportation information to identify registered voters whom he claims are foreign nationals, and that he is currently seeking access to the federal SAVE database to check those individual’s immigration or citizenship status, the Rules are not limited to those sources. Iowa Admin. Code r. 721—28.5. Pursuant to these rules, even if the Secretary is unsuccessful in obtaining a Memorandum of Agreement with the federal government to use SAVE, he could proceed using some unspecified alternative method.

It should be noted that even if the Rules specifically provided that the Secretary would be limited to Iowa Department of Transportation and U.S. SAVE information in his search for foreign national voters, these sources of information are still highly problematic. SAVE is a system operated by the U.S. Citizenship and Immigration Services (USCIS) which is intended to verify that a person has the immigration status which his documents indicate, or that he has provided, for the purposes of determining the immigrant’s eligibility for government benefits and licenses. SAVE does not indicate whether a person is eligible

for a particular benefit; it only verifies information contained in immigration records. Further, SAVE does not contain information on U.S. citizens born in the U.S., (by far the largest group of eligible voters) nor does it contain any information on undocumented workers. Finally, because of the time required to update the system, SAVE will still list new citizens as non-citizens for a period of time after they obtain citizenship. See Ross, Voter Roll Purges Could Spread to at Least 12 States, *available at* [http://www.huffingtonpost.com/2012/07/31/voter-roll-purge\\_n\\_1721192.html](http://www.huffingtonpost.com/2012/07/31/voter-roll-purge_n_1721192.html). A naturalized citizen or a person who has obtained a certificate of citizenship from USCIS (or its predecessor) would have a record in immigration files. But a native born citizen would not have such a record. There is no national database of citizens that states can check to prove U.S. citizenship. The debate whether Iowa should enter into a memorandum of agreement with the federal government to access SAVE to verify voters are U.S. citizens may be worth having; however, it is a debate to be held among Iowa's duly elected Representatives and Senators through the legislative process, if they decide to pursue the matter, not within the agency of the Secretary of State alone.

Similarly, using the Iowa Department of Transportation to generate a list of suspected noncitizen voters, an activity the Secretary of State undertook even prior to these rules, in March 2012 (See *Affidavit of Secretary of State Matt Schultz*, in Addenda), is sure to sweep up legitimate voters. Because drivers licenses must only be renewed every five years, those people who obtain U.S. Citizenship and subsequently register to vote anytime in the five years after getting their driver's licenses will be erroneously identified. The DOT records were never intended to provide an up-to-date accurate list of who is an immigrant and who is a citizen, and were certainly not designed for the purpose of purging the voter registration list. In Florida, where the Secretary of State used the Florida Department of Motor Vehicles to generate a list of suspected noncitizen voters, and where individuals were given 30 days (compared to the Secretary's proposed 14 days) to respond, over 1000 people of 1600 identified in Miami-Dade County had yet to respond. See Alvarez, *Florida Defends Search for Ineligible Voters*, N.Y. TIMES, June 6, 2012, *available at* [http://www.nytimes.com/2012/06/07/us/florida-vows-to-continue-its-search-for-ineligible-voters.html?\\_r=3&ref=politics](http://www.nytimes.com/2012/06/07/us/florida-vows-to-continue-its-search-for-ineligible-voters.html?_r=3&ref=politics). Of those who had responded, the proven false positive rate is unacceptably high. *Id.*

It should be of immediate concern to the Secretary and to the Administrative Rules Review Committee to ensure that voters are not wrongfully disenfranchised. This may include recently naturalized voters whose records may not be up-to-date in SAVE; those who don't respond to mailings from the Secretary of State; and/or those who are intimidated by questions about their citizenship and don't show up on Election Day to vote, despite being absolutely qualified U.S. Citizens and Iowa residents.

## V. The Rules Purport to Address a Problem of Voter Fraud that is Unsupported by Evidence

The error rate from Florida's Department of Motor Vehicle list, used by its Secretary of State to challenge voters, exceeds 1 in 3 (the error rate is in fact likely to be much higher, since that number includes only those individuals who have received and responded to the notice, and been able to provide the necessary documents in time to *prove* their eligibility so far). See Alvarez, *supra*.

The Secretary of State is claiming that he has identified thousands of people who registered to vote despite being non-citizens. The likelihood that this data is correct is extremely low. The analysis of 2,068 reported fraud cases by News21, a Carnegie-Knight investigative reporting project, found 10 cases of alleged in-person voter impersonation since 2000. Natasha Khan and Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, NEWS21, Aug. 12, 2012, available at <http://votingrights.news21.com/article/election-fraud/>. With 146 million registered voters in the United States, those represent about one for every 15 million prospective voters. *Id.*

The low numbers make sense, when the issue is considered from a common-sense perspective. Iowa laws already provide criminal penalties for voter fraud; registering to vote already requires that a person swear – under penalty of perjury – that she is a U.S. citizen. People are unlikely to risk going to prison, and foregoing any chance of becoming a U.S. citizen, to cast a single additional ballot for even their favorite politician. Those people who have lawful immigration status have no incentive to violate the law and vote, and every incentive to avoid breaking the law, as the criminal penalties are compounded by immigration and naturalization consequences.

Rather, since the Secretary of State used Iowa Department of Transportation information, the people most likely to be swept up in this process are those who: (1) got their drivers' license when they were legal immigrants, but not yet citizens; (2) then became citizens; and then (3) registered to vote. Since drivers' licenses in Iowa only need to be renewed every 5 years, the information the DOT has is not up to date, nor was it ever intended to be used in this manner.

Voting is a fundamental right of citizenship. Only qualified, eligible Iowans should be voting here. We all agree on that. But these rules are too vague, and don't afford enough opportunity to ensure an accurate and fair result. They purport to solve a problem for which there just is far too little evidence. But by relentlessly pursuing the elusive noncitizen

fraudulent voter, if even a single such instance exists, the Secretary will intimidate and suppress eligible voters, especially Latinos and new U.S. Citizens.

## **VI. The Rules Provide Inadequate Due Process**

Under the Registered Voter Removal Rule, the Secretary will only give the individual accused of noncitizen voter registration 14 days to respond with proof that the secretary's information is incorrect before she will have the burden to prove her qualifications at a hearing 20-30 days later—that's *if* she even gets the notice sent to her in the first place, since the rules don't even specify how the Secretary will determine the challenged voter's address. That's also assuming that she's not out of town on vacation or business during that narrow window of time. This is not even to mention that in some cases it could take months to get the necessary copies of citizenship documentation from the federal government.

Compare this short time frame for the amount of time the Governor's Office gives itself to process applications from Iowans who have completed a criminal sentence and wish to have their voting rights restored: 6 months.

That amount of time is wholly inadequate. Fourteen days is plainly insufficient time to ensure an opportunity to receive notice and contemplate a response prior to challenge procedures commencing. The application of the challenge procedure's 20-30 day notice prior to a hearing to the citizenship context is similarly an impossible task for many. The process of obtaining a replacement birth certificate can take up to 3 months in some states; the processing time for the Department of State to provide a replacement passport may be expedient, but in some cases may take 4-6 weeks; the process of replacing a birth certificate from abroad, to prove that both of one's parents are U.S. citizens, for example, may take as long as 8 months; the process for replacing a naturalization certificate if it is lost, stolen, or otherwise misplaced, is as long as 6 months, and may exceed a year in some cases. See Affidavit of Della Arriaga, in Addenda.

## **VII. The Rules Are Likely to Chill Eligible Iowa Voters from Exercising their Fundamental Right to Vote, with Disparate Impacts on Latinos and New Citizens**

These Rules raise serious equal protection and due process concerns, as well as possible violations of other federal and state laws. A consistent line of decisions by the United State Supreme Court in cases involving attempts to deny or restrict the right of suffrage has made indelibly clear that any alleged infringement on the right of citizens to vote must be carefully and meticulously scrutinized. *Reynolds v. Sims*, 377 U.S. 533, 562

(1964); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). The underlying impact of enforcing these rules would be the increased likelihood that eligible voters will be unlawfully removed from the voter rolls and denied the right to cast a ballot.

More specifically, the Registered Voter Removal Rule allows the Secretary to use unspecified but “predetermined” procedures to match the names of registered voters with unspecified lists of foreign nationals and direct any matching names to “appropriate” agencies that are not identified. This rule also allows the Secretary to rely on an agency’s list without setting any concrete standards, guidelines, or policies even if the list is known to be outdated or to contain insufficient cross-checking information to guard against database-matching errors. The Secretary would also enjoy unfettered discretion as to the manner and frequency of voter roll purges. The annual list maintenance process spelled out in the Iowa Code is given a clear time frame for action. However, the Registered Voter Removal Rule would grant the Secretary total discretion with respect to the manner and timing of voter purges, regardless of how close to an election the purge is performed. And equally egregious, the rule shifts the burden to voters to prove their eligibility and only provides a short 14-day window before challenge procedures commence, assuming the person receives notice of their possible removal from the rolls in the first place.

Another serious and detrimental impact of applying these rules is the chilling effect they have on voters who otherwise would be able to exercise their fundamental right to vote. The Registered Voter Removal Rule grants the Secretary new authority to send intimidating letters to voters which will likely decrease participation among citizens who receive such notices despite being qualified electors, and who might cancel their registration based on threatening language in the notification, or who simply choose not to vote out of fear that doing so will bring about an unnecessary criminal investigation that will cost the voter time and money.

As shown in the attached affidavits, a number of LULAC of Iowa’s members have already been harmed by the chilling effect of the Registered Voter Removal Rule, insofar as qualified electors are foregoing registration for fear of the financial costs, reputational damage, and potential criminal charges they might face for exercising their fundamental right to vote. See Affidavit of Joe Henry, State Director of LULAC of Iowa, and Affidavit of New Citizen.

In Florida, of those individuals identified from the Department of Motor Vehicles information, 87 percent were minorities, and 58 percent were Latino. Rachael Weiner, *Florida’s Voter Purge Explained*, WASHINGTON POST, June 18, 2012, *available at* <http://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge->

explained/2012/06/18/gJQAhvcNIV\_blog.html. Given the growing numbers of Latinos in Iowa, both lawful immigrants, U.S. Citizens, and those who move here as immigrants and subsequently obtain U.S. Citizenship, the Secretary's process laid out in these rules are far more likely to affect recent U.S. Citizens and Latinos in Iowa than other groups.

A process designed to remove registered voters from the voter registration lists is contrary to the public policy and Iowa's broad and progressive voter registration laws. See Iowa Code § 48A.5 (2011) ("It is the intent of the general assembly to facilitate the registration of eligible residents of this state through the widespread availability of voter registration services. This chapter and other statutes relating to voter registration are to be liberally construed toward this end."); see also Iowa Code § 48A.7A (2011) (providing for election-day and same-day registration). The chilling effect of these rules should not be overlooked or minimized. The attached affidavits show that the Rules have already created confusion and mistrust about the registration process and upcoming election. Affidavit of Joe Henry. Affidavits of New Citizen.

The Secretary of State's attached affidavit shows months of unnecessary delay and avoidance of the proper authorization in his efforts to root out alleged non-citizen voters. Affidavit of Secretary of State Matt Schultz, in Addenda. The timeline shows that the Secretary suspected over 3000 foreign nationals may be registered to vote in Iowa based on evidence he obtained on March 27, 2012 from the Department of Transportation.<sup>2</sup> *Id.* At that time, the Secretary could have brought his concerns to the general assembly and requested authority to address the perceived problem; he could have sought authorization from the Voting Registration Commission. Instead, the Secretary waited until July 20, 2012 before taking any action, without the requisite authority to do so, and without proper consideration or weight given to the harmful effects on eligible voters in Iowa.

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<sup>2</sup> The Secretary stated that when his office compared the DOT's list of foreign nationals who had obtained a license with the state's voter registration records, the "comparison revealed that 1,208 foreign nationals voted in the 2010 election." Affidavit of Secretary of State Matt Schultz. Such a conclusion cannot, respectfully, be drawn. At most, such a comparison could only show that 1,208 individuals were foreign nationals at the time they applied for a driver's license and then subsequently voted in the 2010 election. At no point did this comparison attempt to account for individuals who had obtained citizenship subsequent to obtaining a driver's license, and a comparison of these two lists alone cannot show that even a single foreign national voted in the 2010 election.

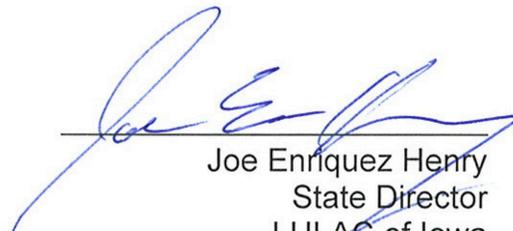
## Conclusion

For the foregoing reasons, the undersigned organizations request that the Secretary of State terminate the rulemaking process noticed as ARC 0271C in the Iowa Administrative Bulletin August 8, 2012, a public hearing with the Secretary of State, and a public hearing with the Administrative Rules Review Committee by special or regular meeting.

Respectfully,



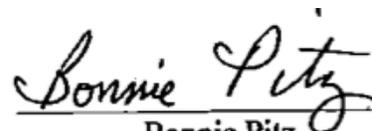
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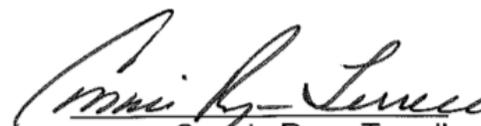


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## **Addenda**

Affidavit of Des Moines Immigration Attorney Della Arriaga

Affidavit of New Citizen

Affidavit of Joe Henry, State Director of LULAC of Iowa

Affidavit of Secretary of State Matt Schultz

AFFIDAVIT

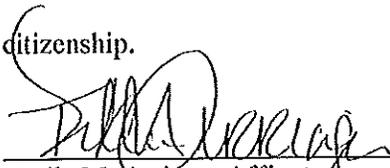
Affidavit in Support of the ACLU of Iowa's Public Comments in Opposition to Administrative Rule  
721—28.5 (47, 48A) "Noncitizen registered voter identification and removal process"

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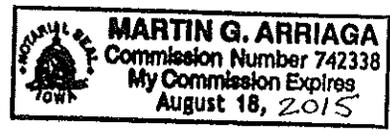
STATE OF IOWA     )  
                                  )  
COUNTY OF POLK    )

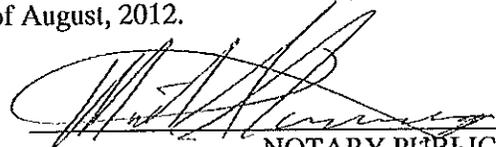
1. My name is Della M. Arriaga and I am the owner and president of Arriaga Law Office, P.C. I have practiced law in the State of Iowa for over six years having been assigned the Bar # AT 0008767.
2. My law office works primarily with immigration law and I have represented hundreds of individuals with immigration and citizenship related issues.
3. In my practice, I have dealt with clients from numerous parts of the world. I have also represented numerous individuals who are U.S. citizens but need to establish proof of citizenship because their documentation was missing, stolen, lost or otherwise not available.
4. The four primary ways to establish U.S. citizenship are as follows:
  - a. Birth certificate – the process of obtaining this type of document varies from state to state. In some of my cases, it has taken as long as 3 months to receive a replacement document.
  - b. Passport – Per the Department of State, the process time of such request is 4 to 6 weeks. In general the process is expedient but it has been my experience that the process does have some flaws to include loss of the original naturalization and/or birth certificate.
  - c. Naturalization Certificate – the process of replacing this type of document can be as long as 6 months, although, I have had some cases where the replacement process took as long as 15 months.
  - d. Birth Abroad Certificate- the process of replacing or amending this type of document can be as long as 8 months.

5. The process laid out in Iowa Admin. Code r. 721—28.5 (47, 48A) (2012) promulgated by the Secretary of State on July 20, 2012, provides for an initial 14 days to dispute the allegation of non-citizen voter registration, after which a challenge procedure set out in Iowa Code 48A.14 is initiated, which provides for a hearing to establish eligibility to vote with only 20-30 days notice. In my opinion, this amount of time – 14 days, then 20-30 days, is inadequate to provide some citizens who may lack documentation to prove their citizenship a fair opportunity to collect the necessary documentation.
6. The process outlined in Iowa Code r. 721-28.5(47, 48A)(2012) profoundly impacts all citizens whether born in the U.S. or subsequently naturalized because the process of requesting primary evidence to establish citizenship takes longer than the allotted time of 14 days.
7. In my practice, I have encountered numerous Iowa residents who were born in the U.S. but were unable to produce proof of their U.S. citizenship. Subsequently, I have assisted these people in obtaining their birth certificates which for the most part took more than 14 days.
8. I am also concerned for my immigrant clients because I suspect they will be wrongfully identified in this process. If so, they will not have an adequate opportunity to refute the allegations and preserve their right to vote. For many, the arduous and inadequate process, especially under a threat of criminal prosecution for voter fraud, may simply be too great, or impossible, a task to contemplate. Individuals who are sent a letter asking them to voluntarily seek removal from the voter registration list or prove they are a citizen—without sufficient time to do so—will wrongfully lose their right to vote despite the fact of their citizenship.

  
 Della M. Arriaga, Affiant

Subscribed and sworn to before me on this 26<sup>TH</sup> day of August, 2012.



  
 NOTARY PUBLIC

**AFFIDAVIT**

Affidavit in Support of the ACLU of Iowa's Public Comments in Opposition to Administrative Rule 721—28.5 (47, 48A) "Noncitizen registered voter identification and removal process"

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STATE OF IOWA     )  
                                  )  
COUNTY OF POLK    )

1. I, Beatriz A. Sandoval, being duly sworn, depose, and state that I fear that I will be erroneously identified by the Secretary of State in carrying out the rule 721—28.5, "Noncitizen registered voter identification and removal process," despite being a proud U.S. Citizen and a qualified, eligible registered voter.
2. I live and work in Des Moines, Iowa.
3. I applied for and received a drivers' license from the Iowa Department of Transportation on in 2000, at which time my immigration status was a legal permanent resident.
4. I subsequently became a U.S. Citizen on September 2009.
5. I subsequently registered to vote in Iowa on September 2009.
6. Last month, I renewed my driver's license in the State of Iowa and I declared I was a citizen but the Department of Transportation did not verify my status in any way.
7. Because the Secretary of State has already compiled their list for this upcoming election based on the Department of Transportation's information, I fear:
  - a. My name will appear on the list of non-citizen voter registration because my license renewal was recent and my updated status of U.S. citizen may not be reflected on the Secretary of State's list, OR
  - b. My name will appear on the list because the Department of Transportation did not verify I my status as a United States citizen and now I will have to be inconvenienced by having to submit proof to the Secretary of State.

  
Beatriz A. Sandoval, Affiant

Subscribed and sworn to before me on this 21<sup>th</sup> day of August, 2012.

 **CRYSTAL Y. HERNANDEZ**  
Commission Number 769750  
My Commission Expires 9/20/14

  
NOTARY PUBLIC

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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AMERICAN CIVIL LIBERTIES	)	Case No. CVCV009311
UNION OF IOWA, and LEAGUE OF	)	
UNITED LATIN AMERICAN CITIZENS	)	
OF IOWA,	)	
	)	
Petitioners,	)	
	)	<b>AFFIDAVIT IN SUPPORT OF</b>
v.	)	<b>RESISTANCE TO MOTION</b>
	)	<b>TO DISMISS</b>
MATT SCHULTZ,	)	
	)	
Respondent.	)	

---

**AFFIDAVIT**

STATE OF IOWA     )  
                          )  
COUNTY OF POLK    )

1. I, Joseph G. Henry (Joe Enriquez Henry), being duly sworn, depose, and state that I am the State Director for the League of United Latin American Citizens (LULAC) of Iowa.
2. LULAC of Iowa includes 400 members, in four local councils, all of whom are Latino and U.S. Citizens, who are residents of Iowa.
3. As part of our ongoing efforts to engage Latinos in Iowa in full participation in the democratic process, LULAC of Iowa has been reaching out to Latino citizens in Iowa to register them to vote before the upcoming General Election. To this end, LULAC of Iowa paid \$ 943.50 to the Office of the Secretary of State on 7/2/12 to acquire a list of Iowa's active voters.
4. We received this list on 7/2/12, and have identified 34,618 registered Iowa voters of Latino or Hispanic heritage.
5. Our community has already felt the chilling effect of the Secretary of State's efforts toward the removal of purported non-citizens from Iowa's voting rolls. Our council leaders have already received phone calls from a number of concerned members inquiring as to whether there will be a removal of registered Latinos from the voter files. We believe the list of individuals the Secretary of State has identified will turn out to include many qualified, eligible, U.S. citizens of Latino heritage. It is clear from discussions with our new citizens that there is a growing fear that the Secretary of State may somehow have the power to not only remove their right to vote but also charge them with a felony. Many new citizens are unfamiliar with the legal framework of the United States and may not be able to understand how to prove their citizenship in order to vote.
6. A number of our members acquired U.S. citizenship after the last General Election in 2008, and subsequent to acquiring citizenship, have registered to vote.

7. According to the process laid out by the Secretary of State, these individuals are almost certainly going to be included on the list of non-citizen aliens who acquired a drivers' license in Iowa.
8. Our members are fearful of erroneous identification, that the Secretary's actions demonstrate the real possibility of erroneous disenfranchisement, that they may not have adequate time or opportunity to prove their citizenship in time for their vote to be counted, or that they will have to endure the time, financial cost, and possible reputational harm from a wrongful criminal investigation, even if it does not result in conviction given their legal status, such that many U.S. Citizens, and Iowa residents, who are qualified electors, but who have Latino names, feel deterred from even registering to vote.

Joseph G. Henry (signature)  
Joseph G. Henry (printed name)

Subscribed and sworn to before me on this 19th day of August, 2012.

Araceli Goode  
NOTARY PUBLIC  
SIGNATURE AND STAMP



IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FILED  
POLK COUNTY, IA  
12 AUG 16 PM 2:25

AMERICAN CIVIL LIBERTIES )  
UNION, and LEAGUE OF UNITED )  
LATIN AMERICAN CITIZENS )  
OF IOWA, )  
Petitioners, )  
v. )  
MATT SCHULTZ, )  
Respondent. )

Case No: CV 9311  
CLERK DISTRICT COURT

**AFFIDAVIT IN SUPPORT OF  
RESISTANCE TO MOTION  
FOR TEMPORARY  
INJUNCTIVE RELIEF**

**AFFIDAVIT**

STATE OF IOWA )  
COUNTY OF POLK )

1. I, Matt Schultz, being duly sworn, depose, and state that at all times material hereto, I serve as the Iowa Secretary of State.
2. As part of my duties as Secretary of State as also serve as the State Commissioner of Elections and the State Registrar of Voters:
3. On March 19, 2012 the Iowa Department of Transportation provided my office with a database of foreign nationals who have obtained Iowa drivers' licenses. A timeline summarizing these events is attached as Exhibit 1.
4. I instructed my staff to compare the DOT database with Iowa voter registration records to determine if any foreign nationals were registered to vote in the State of Iowa.
5. The comparison revealed that 3,582 foreign nationals registered to vote since 2008.

6. I further instructed my staff to determine how many foreign nationals had voted in the 2010 general election.
7. The comparison revealed that 1,208 foreign nationals voted in the 2010 general election.
8. To determine whether Iowa's internal database was accurate and up to date, I, through my staff, informally requested access to the federal SAVE database. SAVE is a database maintained by the U.S. Citizenship and Immigration Service and is an accurate way to determine an individual's immigration status.
9. On April 18, my office made a formal application for access to SAVE.
10. On April 25, my office was informed that the United States Citizenship and Immigration Services was seeking guidance from the federal Department of Justice, Voting Rights Section to ensure that verifying citizenship status of current and future voters using SAVE does not conflict with the Voting Rights Act.
11. On May 7, the federal Department of Homeland Security (DHS) inquired on our intended use of the SAVE database.
12. On May 22, Sarah Reisetter, Iowa Director of Elections, outlined Iowa's proposed procedure for implementing SAVE access.
13. My office made repeated inquiries on the status of Iowa's application.
14. On July 17, Raymond Rayner of the federal DHS informed Reisetter that DHS was now in a position to "go ahead and get Iowa signed up" for SAVE. Rayner indicated that Iowa would need to submit a new SAVE application. Emails documenting correspondence between my office and DHS

concerning SAVE are attached hereto as Exhibit 2. The emails attached hereto as Exhibit 2 is a true and authentic copy of the original.

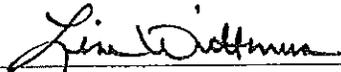
15. On July 20, I promulgated two administrative rules implementing Iowa's access to SAVE as outlined to DHS and submitted a new application for SAVE access incorporating the new rules.
16. Due to the time constraints of the forthcoming general election and the statutory deadline for challenging a voter registration, I determined that good cause existed to forego notice and public comment on the rules. It was impractical to initiate rulemaking before DHS approved of the intended use of SAVE. If DHS did not approve of the proposed rule, the rule would be unnecessary. My office provided DHS with an outline of the proposed rules on May 22. DHS did not approve of the rules until July 17. There was insufficient time between July 17 and the November election to promulgate the rules with a notice and comment period.
17. I determined that the rules provided a public benefit so as to waive the thirty-five day publication period. For individuals suspected of being illegally registered to vote it provides a number of safeguards to ensure that my office is proceeding on valid information, and it provides notice and an opportunity to be heard prior to removal from the registration records. For all other voters, the rules provide a transparent, uniform system for investigating and removing ineligible voters from the registration records. The rules become effective immediately upon filing.

18. No one from the American Civil Liberties Union or the League of United Latin American Citizens of Iowa requested that I or my office stay enforcement of these two rules.



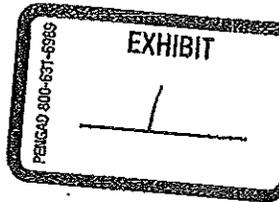
MATT SCHULTZ

Subscribed and sworn to before me on this 16<sup>th</sup> day of August, 2012.



NOTARY PUBLIC IN AND FOR THE  
STATE OF IOWA





Iowa Secretary of State  
SAVE Application Timeline

**Monday, March 19:** Iowa Department of Transportation provides a file of foreign nationals with Iowa driver's license.

**Tuesday, March 27:** Iowa Secretary of State is finally able to download file provided by DOT. A comparison of the file with registration records reveals that over 3000 foreign nationals are registered to vote in Iowa and that over 1200 voted in the 2010 general election.

**Friday, March 30:** Deputy Gibbons initially requested access to the SAVE database in a phone conversation with the federal Department of Homeland Security.

**Wednesday, April 18:** Deputy Gibbons emailed a formal application for SAVE access to [SAVEregistration@dhs.gov](mailto:SAVEregistration@dhs.gov), addressed to Raymond Reynor.

**Wednesday, April 25:** Secretary of State received a memo written by the U.S. Citizenship and Immigration Services Office of Legislative Affairs. The memo indicated that "the SAVE Program is expeditiously assessing whether USCIC has the capability of fulfill Iowa's request." In addition, the memo states that "USCIA needs to ensure that verifying the citizenship status of current and future voters using the SAVE Program does not conflict with the Voting Rights Act. As such, USCIS has sought guidance from the Department of Justice Voting Rights Section on this issue and we are now waiting on the Department's response."

**Monday, May 7:** Raymond Rayner of DHS emailed Deputy Gibbons information about the SAVE program and some follow up questions about Iowa's intended procedures for use of the SAVE database.

**Tuesday, May 22:** Sarah Reisetter responded to the questions Raymond Rayner of DHS posed to Deputy Gibbons on Monday, May 7 and outlined Iowa's proposed procedure for implementing SAVE access.

**Friday, May 25:** A response was received from Raymond Rayner of DHS indicating that the Office of Chief Counsel was going to be consulted regarding the formal application for access to SAVE made by Deputy Gibbons.

**Tuesday, June 26:** Sarah Reisetter wrote to Raymond Rayner of DHS asking for an update on the status of Iowa's request for access to the SAVE program.

**Tuesday, July 17:** Raymond Rayner of DHS called Sarah Reisetter and informed her that DHS was now in a position to "go ahead and get Iowa signed up" for the SAVE Program. He apologized for taking so long. He indicated the next steps would be for Iowa to submit another application.

**Friday, July 20:** Rule implementing a process for using SAVE were adopted and filed by the Secretary of States. A new application was submitted by the Secretary for access to the SAVE Program and the rule were cited as legal authority.

Orr, Bill [SOS]

**From:** Reisetter, Sarah [SOS]  
**Sent:** Tuesday, March 27, 2012 9:50 AM  
**To:** Orr, Bill [SOS]  
**Cc:** Gibbons, Jim [SOS]  
**Subject:** FW: Foreign National - Legal Presence extract

Bill:

This whole thing has been really embarrassing. Is there any way to notify senders when we don't receive an email being blocked because of file size? Or can we receive a message that an email is being blocked because of file size? I kept harassing this woman, she kept responding and I wasn't receiving her replies, making me look like a total flake.

Sarah

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**From:** Reisetter, Sarah [SOS]  
**Sent:** Tuesday, March 27, 2012 9:45 AM  
**To:** 'Ballard, Karen [DOT]'  
**Cc:** Lowe, Mark [DOT]; Gibbons, Jim [SOS]  
**Subject:** RE: Foreign National - Legal Presence extract

We were able to grab it now and no, I did not receive your email from 11:18 yesterday. Thanks again and I'm sorry for all the trouble.

Sarah

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**From:** Ballard, Karen [DOT] [<mailto:Karen.Ballard@dot.iowa.gov>]  
**Sent:** Tuesday, March 27, 2012 9:42 AM  
**To:** Reisetter, Sarah [SOS]  
**Cc:** Lowe, Mark [DOT]; Gibbons, Jim [SOS]  
**Subject:** RE: Foreign National - Legal Presence extract

I responded to this on another email, but wanted to make sure you got it (since the other email had the attachment still on it). We did place this on the FTP site.

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**From:** Reisetter, Sarah [SOS] [<mailto:Sarah.Reisetter@sos.iowa.gov>]  
**Sent:** Tuesday, March 27, 2012 9:27 AM  
**To:** Ballard, Karen [DOT]  
**Cc:** Lowe, Mark [DOT]; Gibbons, Jim [SOS]  
**Subject:** RE: Foreign National - Legal Presence extract

Karen:

My IT director thinks our firewall may be stripping the contents of the file. I finally received the email but the folder is empty.

This is becoming such a hassle, I'm happy to send someone to your office to pick it up. Alternatively, we could grab it from the ftp site if that would work for you.

Again, I apologize for this.

Sarah

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**From:** Ballard, Karen [DOT] [mailto:Karen.Ballard@dot.iowa.gov]  
**Sent:** Monday, March 26, 2012 8:08 AM  
**To:** Relsetter, Sarah [SOS]  
**Cc:** Lowe, Mark [DOT]  
**Subject:** FW: Foreign National - Legal Presence extract

Zipped folder attached per your email request on Friday.

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**From:** Ballard, Karen [DOT]  
**Sent:** Friday, March 23, 2012 4:00 PM  
**To:** Relsetter, Sarah [SOS]  
**Cc:** Lowe, Mark [DOT]  
**Subject:** FW: Foreign National - Legal Presence extract

Here is that file we discussed in the meeting today.

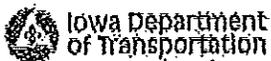
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**From:** Ballard, Karen [DOT]  
**Sent:** Monday, March 19, 2012 11:30 AM  
**To:** Relsetter, Sarah [SOS]  
**Cc:** McLearn, Kathy [DOT]; Lowe, Mark [DOT]  
**Subject:** Foreign National - Legal Presence extract

Here is the file you requested on March 9 (partial cut of previous email request wording in yellow below). It's an Excel extract containing Foreign Nationals that have been issued a credential after Dec 31, 2007 and includes the following fields:

- DL #
- First Name
- Middle Name
- Last Name
- Date of Birth
- Residency Address
- City
- State
- Zip
- Issue Date
- Expiration Date

I've also been asked if it would be possible to obtain a file of those people who have obtained a driver's license or non-operator ID since 2008 who are over the age of 18 and here legally but not citizens.



Iowa Department  
of Transportation

*Karen Ballard*

Motor Vehicle Division  
Office of Driver Services  
ph# 515-237-3005  
fax# 515-237-3071

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**From:** Gibbons, Jim [SOS] [<mailto:Jim.Gibbons@sos.iowa.gov>]

**Sent:** Wednesday, April 18, 2012 3:34 PM

**To:** [SAVEregistration@dhs.gov](mailto:SAVEregistration@dhs.gov)

**Subject:** Please forward to Raymond Reynor

Mr. Reynor

Please find the Iowa Secretary of State's application to SAVE. Thank you for your attention.

Jim Gibbons

Chief Deputy Iowa Secretary of State

**Gibbons, Jim [SOS]**

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**From:** Nabavi, Jonathan [Jonathan.Nabavi@mail.house.gov]  
**Sent:** Wednesday, April 25, 2012 11:14 AM  
**To:** Gibbons, Jim [SOS]  
**Subject:** FW: Response to Iowa Secretary of State re: use of SAVE system  
**Attachments:** SAVE response for Iowa Secretary of State Office Inquiry.docx

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Jim,

Please find attached the response we received from USCIS. They appear to be of the position that SAVE is ineffective in determining if someone is qualified to vote.

Best,  
Jonathan

**Subject:** Response to Iowa Secretary of State re: use of SAVE system

Jonathan,

The attached response was prepared to address your inquiry about the use of the Systematic Alien Verification for Entitlements (SAVE) system by the Iowa Secretary of State. Please let me know if you have any further questions.

Regards.

Paul Powell  
USCIS  
Office of Legislative Affairs

Email secured by Check Point

The U. S. Citizenship and Immigration Services (USCIS) Office of Legislative Affairs has been provided a response regarding your inquiry about the status of a request made by the Iowa Secretary of State on March 30, 2012, to access the Systematic Alien Verification for Entitlements (SAVE) Program to verify the citizenship status of voters. Through the SAVE Program, U.S. Citizenship and Immigration Services provides authorized federal, state or local agencies with a means to verify the current immigration status or naturalized or derived citizenship status of individuals.

The use of the SAVE program for verifying the citizenship status of voters has significant limitations. SAVE cannot verify individuals who acquired U.S. citizenship by birth in the United States because USCIS only has comprehensive records on naturalized and, to the extent they have acquired Certificates of Citizenship, derived U.S. citizens. To ensure accurate verification of current status, SAVE does not allow verification based on name and/or date of birth only.

SAVE requires all participating agencies to provide numeric identifiers (alien registration number and relevant certificate number if a Certificate of Naturalization or Certificate of Citizenship is presented) and biographic information found on immigration-related documents. SAVE procedures also require users to inspect the document presented, ensure that it relates to the individual registering and follow the entire SAVE verification process, including submitting copies of the document if requested by SAVE to complete a verification request.

The SAVE Program is expeditiously assessing whether USCIS has the capability to fulfill Iowa's request. It is important to note that the SAVE registration process usually takes several months but is dependent on a number of factors, including the completeness of the application submitted and the timeliness of an applicant's response to information requested by SAVE to complete the registration process.

Please know that SAVE personnel have contacted the Office of the Iowa Secretary of State on April 17, 2012, to better understand Iowa's intended use (e.g., verification of existing voters or registering voters) and determine if it is able to comply with all SAVE procedures, including providing the numeric identifiers found on each voter's immigration-related documents and copies of those documents, if requested. Once we receive more information from Iowa, we will be in a position to respond to the request.

Also, USCIS needs to ensure that verifying the citizenship status of current and future voters using the SAVE Program does not conflict with the Voting Rights Act. As such, USCIS has sought guidance from the Department of Justice Voting Rights Section on this issue and we are now waiting on the Department's response.

X X X X X X

**Gibbons, Jim [SOS]**

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**From:** Carstensen, James [James.Carstensen@mail.house.gov]  
**Sent:** Thursday, April 26, 2012 10:18 AM  
**To:** Gibbons, Jim [SOS]  
**Subject:** FW: Response to Iowa Secretary of State re: use of SAVE system  
**Attachments:** SAVE response for Iowa Secretary of State Office inquiry from Mr. Latham.docx

Jim – Please see the attached response from the U.S. Citizenship and Immigration Services (USCIS) to your inquiry. Please let me know if we can be of additional assistance on this matter.

-- James

James D. Carstensen  
Chief of Staff  
Office of Iowa Congressman Tom Latham  
202-225-5476  
[latham.house.gov](mailto:latham.house.gov)

**From:** Parker, Jacob  
**Sent:** Thursday, April 26, 2012 10:14 AM  
**To:** Carstensen, James  
**Subject:** FW: Response to Iowa Secretary of State re: use of SAVE system

FYI

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**From:** Powell, Paul [<mailto:Paul.Powell@uscis.dhs.gov>]  
**Sent:** Thursday, April 26, 2012 10:01 AM  
**To:** Parker, Jacob  
**Subject:** FW: Response to Iowa Secretary of State re: use of SAVE system

Jacob,

The attached response was prepared to address the potential use of the Systematic Alien Verification for Entitlements (SAVE) system by the Iowa Secretary of State. Please note that our SAVE experts have initiated contact with the Office of the Iowa Secretary of State to assist in determining how the State may be able to access the SAVE program.

Please let me know if you have any further questions.

Regards,

Paul Powell  
USCIS  
Office of Legislative Affairs  
4/26/12

Email secured by Check Point

Orr, Bill [SOS]

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From: Rayner, Raymond P [Raymond.P.Rayner@uscis.dhs.gov]  
Sent: Monday, May 07, 2012 1:44 PM  
To: Gibbons, Jim [SOS]  
Cc: Roessler, John E; Rahi, Alissar K; Johnson, Paul M; Sanchez, Yolanda K  
Subject: FW: Please forward to Raymond Reynor (Iowa VR dialog)  
Attachments: SAVENon-FedMOA\_01-09-2012.doc

Mr. Gibbons,

Pursuant to our telephone conversation on April 20, 2012, I am sending this request for follow-up information concerning your request to access the SAVE Program for voter registration and enforcement. During our conversation, you advised that you wanted to use SAVE both at the point of registration of voters and for enforcement investigations based on information obtained from the Iowa DMV indicating that registered individuals were not citizens when they obtained a driver's license.

I advised that the use of the SAVE program for verifying the citizenship status of voters has significant limitations. SAVE cannot verify individuals who acquired U.S. citizenship by birth in the United States because USCIS only has comprehensive records on naturalized and, to the extent they have acquired Certificates of Citizenship, derived U.S. citizens. To ensure accurate verification of current status, SAVE does not allow verification based on name and/or date of birth only. Additionally, as I advised, SAVE cannot verify individuals based on Social Security Number.

SAVE requires all participating agencies to provide numeric identifiers (alien registration number and relevant certificate number if a Certificate of Naturalization or Certificate of Citizenship is presented) and biographic information found on immigration-related documents. SAVE procedures also require users to inspect the document presented, ensure that it relates to the individual registering and follow the entire SAVE verification process, including submitting copies of the document if requested by SAVE to complete a verification request. We have enclosed a copy of the SAVE Memorandum of Agreement to give you more insight into the terms and conditions governing a user agency's participation in the SAVE Program.

Before SAVE can proceed with processing and providing your request to our Office of Chief Counsel (OCC) for consideration based on the issues, both operational and legal, surrounding voter registration we need some additional details on the procedures and processes you intend to follow to use SAVE. This information includes:

- Official registration procedures showing the documents that individuals are required to present at the point of registration and whether copies are made
- The information you will obtain from the DMV to determine that an individual was not a citizen when they obtained their driver's license, whether you will have copies of documents and the official investigative procedures for processing identified cases
- Whether your agency has or will acquire each individual's unique immigration identifier, such as alien number and naturalization certificate number (added)
- If your procedures do not currently allow you to comply with SAVE requirements, an explanation of your proposal for using SAVE

If you have any questions, please let me know.

Thanks

Raymond Rayner  
202-443-0137

**Reisetter, Sarah [SOS]**

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**From:** Reisetter, Sarah [SOS]  
**Sent:** Wednesday, July 25, 2012 4:27 PM  
**To:** 'Rayner, Raymond P'  
**Cc:** Roessler, John E; Johnson, Paul M; Rahl, Alissar K; Benbow, Tommy; Grant, Cheryl A  
**Subject:** RE: Iowa VR Dialog-- Response to Follow Up Questions

That sounds great. We appreciate it.

Sarah

---

**From:** Rayner, Raymond P [mailto:Raymond.P.Rayner@uscis.dhs.gov]  
**Sent:** Wednesday, July 25, 2012 4:24 PM  
**To:** Reisetter, Sarah [SOS]  
**Cc:** Roessler, John E; Johnson, Paul M; Rahl, Alissar K; Benbow, Tommy; Grant, Cheryl A  
**Subject:** RE: Iowa VR Dialog-- Response to Follow Up Questions

Sara

Cheryl advised that you contacted her today. Your application has been received and we are processing it. We will let you know if we need anything else. Let me know if you have any questions.

Thanks

Raymond Rayner  
202-443-0137

---

**From:** Rayner, Raymond P  
**Sent:** Tuesday, July 17, 2012 10:01 AM  
**To:** Reisetter, Sarah [SOS]  
**Cc:** Roessler, John E; Johnson, Paul M; Rahl, Alissar K; Benbow, Tommy  
**Subject:** RE: Iowa VR Dialog-- Response to Follow Up Questions

Sara

Per our conversation this morning, Tommy Benbow will assist you if you have any questions about the process of moving forward with your application and providing the necessary information concerning your requested use and legal authorities. He can be reached at 202-507-2751 (cell) or 202-443-0133 (desk). Once we receive the information, I will be contacting you regarding the details of a Memorandum of Agreement between the Iowa Secretary of State and SAVE.

Thanks

Raymond Rayner  
202-443-0137

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**From:** Reisetter, Sarah [SOS] [mailto:Sarah.Reisetter@sos.iowa.gov]  
**Sent:** Tuesday, June 26, 2012 12:42 PM  
**To:** Rayner, Raymond P  
**Cc:** Roessler, John E; Johnson, Paul M; Rahl, Alissar K  
**Subject:** RE: Iowa VR Dialog-- Response to Follow Up Questions

Good Morning Mr. Rayner:

Do you have any update about the status of Iowa's request?

Thank you,

Sarah Reissetter

---

**From:** Rayner, Raymond P [<mailto:Raymond.P.Rayner@uscis.dhs.gov>]  
**Sent:** Friday, May 25, 2012 1:55 PM  
**To:** Reissetter, Sarah [SOS]  
**Cc:** Roessler, John E; Johnson, Paul M; Rahl, Alissar K  
**Subject:** RE: Iowa VR Dialog-- Response to Follow Up Questions

Ms. Reissetter,

Thank you for your response to our prior questions concerning the Iowa Secretary of State's request to use the SAVE Program to verify individuals identified as non-citizens on its voter rolls. Before we ask for any additional information, we will consult with our Office of Chief Counsel (OCC). We will get back to you as soon as we can regarding your request.

Thanks

Raymond Rayner  
202-443-0137

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**From:** Reissetter, Sarah [SOS] [<mailto:Sarah.Reissetter@sos.iowa.gov>]  
**Sent:** Tuesday, May 22, 2012 4:13 PM  
**To:** Rayner, Raymond P  
**Subject:** Iowa VR Dialog-- Response to Follow Up Questions  
**Importance:** High

Dear Mr. Rayner:

Secretary Schultz has asked me to respond to the request you sent to Iowa Deputy Secretary of State Jim Gibbons on Monday, May 7, 2012 for follow-up information regarding the State of Iowa's request for access to SAVE, including information about our agency's intended uses of the application. To address your specific questions:

1. Iowa does not currently have a law requiring proof of citizenship as a prerequisite to voter registration. The Iowa Secretary of State will not use SAVE at the point of registration.
2. The Secretary of State is in the process of adopting administrative regulations that would govern an investigative process during which SAVE would be used. The proposed procedure is as follows:
  - a. Periodically, the voter registration database will be matched against the DOT records of individuals that have received Iowa driver's licenses or non-operators identification cards while also claiming legal status as a foreign national.
  - b. Matches between the foreign national file from the DOT and the statewide voter registration file will be identified for further investigation.
  - c. An investigator from the SOS office will ask the Iowa DOT for copies of immigration-related documents that were presented at the time the individual obtained a state ID. The SOS will obtain the individual's unique immigration identifier from these documents.
  - d. The SOS proposes to then use SAVE to determine whether the individual has obtained US citizenship subsequent to receipt of the state ID. If SAVE indicates the individual has become a US citizen since the date

they obtained their state ID, no further steps will be taken. If SAVE indicates the individual has not become a US citizen since the date they obtained their state ID, the following actions will be taken:

- i. If the individual has voting history, in addition to an active registration record, the voter participation information will be verified with the local election official and if confirmed, the case will be referred to local law enforcement for further investigation, including verification of citizenship status and possible prosecution if warranted.
- ii. If the individual does not have voting history, voter registration challenge procedures currently authorized by Iowa law may be initiated. (See Iowa Code sections 48A.14 – 48A.16) Please note that determinations made during voter registration challenge proceedings may be appealed to district court.

If you have any additional questions or concerns about the Iowa Secretary of State's intended uses of SAVE, please feel free to contact me.

Sincerely,

Sarah G. Relsetter, J.D., C.E.R.A.  
Director of Elections  
Iowa Secretary of State's Office  
Lucas Building First Floor  
321 E. 12th St.  
Des Moines, IA 50319  
515.281.0145  
[www.sos.iowa.gov](http://www.sos.iowa.gov)  
[sarah.relssetter@sos.iowa.gov](mailto:sarah.relssetter@sos.iowa.gov)

 Please consider the environment before printing this e-mail.

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# 0528 ARC Comments Addendum 2

MATT SCHULTZ  
SECRETARY OF STATE



LUCAS BUILDING  
DES MOINES, IOWA 50319

## OFFICE OF THE IOWA SECRETARY OF STATE

December 7, 2012

R. Ben Stone  
Executive Director  
ACLU of Iowa Foundation, Inc.  
505 5<sup>th</sup> Ave, Ste. 901  
Des Moines, IA 50309

RE: Open Records Request Received November 21, 2012

Dear Mr. Stone:

This is a response to the open records request you filed with the Secretary of State's office on November 21, 2012. Each of your specific requests is addressed individually below.

1. All records created in 2012 regarding the number of reports of voter fraud related to the November 6, 2012 general election received by phone, especially at the Voter Fraud Hotline (1-888-SOS-VOTE)

Our office received thousands of phone calls leading up to the general election. We checked with ICN and it is impossible to determine how many callers chose option "1" when calling 1-888-SOS-VOTE. The response from ICN is included. Records about the content of some calls were made, which are addressed in request number 3 below.

2. All records created in 2012 regarding the number of reports of voter fraud related to the November 6, 2012 general election received online, especially through the form on the Secretary of State's website (<https://sos.iowa.gov/elections/voterfraud/index.aspx>).

Our office also received thousands of emails leading up to the general election. The online forms completed by web site users were sent to the email of Deputy of Elections, Mary Mosiman. There are 34 emails related to the general election.

3. All records created in 2012 regarding the content of any and all reports of voter fraud related to the November 6, 2012 election.

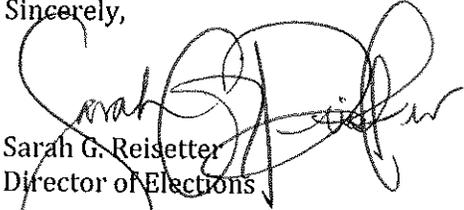
There were 92 phone calls where the SOS office knows the caller chose option "1" when calling 1-888-SOS-VOTE, the substance of which was documented. We estimate the compilation of our records related to the phone calls will cost \$40. Consistent with section 22.3, we require prepayment of those costs before we will move forward with collecting the records.

There are 34 emails. We estimate the compilation of those emails, the search for responses and review of the results will cost \$40. Consistent with section 22.3, we require prepayment of those costs before we will move forward with collecting the records.

There is also a spreadsheet with basic information about complaints that have been forwarded to DCI, which is included with this response.

In sum, we estimate the cost of the staff time necessary to produce and review the records you have requested is \$80. As permitted by Iowa law, the Secretary of State's policy is to require prepayment of the estimated expenses prior to provision of the records. Please advise me as to the manner in which you prefer to proceed. If you have questions about this information, please let me know.

Sincerely,



Sarah G. Reisetter  
Director of Elections

Cc: Charlie Smithson, Secretary of State Legal Counsel  
Jeffrey Thompson, Deputy Attorney General  
Meghan Gavin, Assistant Attorney General

**Reisetter, Sarah [SOS]**

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**From:** Allen, Cheryl [SOS]  
**Sent:** Tuesday, December 04, 2012 10:29 AM  
**To:** Reisetter, Sarah [SOS]  
**Subject:** Voter Fraud Hotline

-----Original Message-----

**From:** "HP OpenView Service Desk" [<mailto:ServiceDesk@state.ia.us>]  
**Sent:** Tuesday, December 04, 2012 10:26 AM  
**To:** Allen, Cheryl [SOS]  
**Subject:** Support Request 489278 has been Completed. Description: JLC - SOS DESM Requesting information on prompts tracking from hotline

Dear Allen, Cheryl [SOS],

The solution of the support request is: Cox, Jody [ICN] added on 12/4/12 10:25 AM CST:  
I called out Voice Techs and they reported that there isn't a way to get this information. They say that the pressing the options is not captured and therefore cannot be obtained.

Please contact the appropriate service desk if this solution is not satisfactory or if you have any questions.

ICN Service Desk  
(ICN Network Operations Center)  
(515) 725-4400  
[ICNServiceDesk@iowa.gov](mailto:ICNServiceDesk@iowa.gov)

ITE Service Desk  
(515) 281-5703  
[ITE.ServiceDesk@iowa.gov](mailto:ITE.ServiceDesk@iowa.gov)

DOT Service Desk  
(515) 239-1075  
[DOT-Helpdesk@iowa.gov](mailto:DOT-Helpdesk@iowa.gov)

GSE Customer Service Center  
(515) 242-5120  
[CustServ.GSE@iowa.gov](mailto:CustServ.GSE@iowa.gov)

DNR Service Desk  
(515) 281-5920  
[HelpDesk@dnr.iowa.gov](mailto:HelpDesk@dnr.iowa.gov)

(This is an automated message. Please do not reply.)

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Date of Complaint	Complainant	Nature of Complaint	Method of Receipt	Action Taken	Resolution
8/7/2012	Warren County Auditor's Office	Felon using aka registered to vote Email received seemingly admitting to voting for another individual	email email	Forwarded to DCI Forwarded to DCI	Felony charge filed
8/15/2012	Joel Miller	Absentee request received with a birthdate that did not match the VR file. Auditor followed up with voter who reported they did not request an absentee ballot	email	Forwarded to DCI	
8/27/2012	Lindy Demry	Absentee request received with a birthdate that did not match the VR file. Auditor followed up with voter who reported they did not request an absentee ballot	Initial call to Melissa, then by email to SR	Forwarded to DCI	
9/24/2012	Gloria Carr	Various absentee ballot request irregularities		Forwarded to DCI	
10/9/2012	Ethan Waldock	Reporting felon registered and voting	SOS email account	Looked up felon in IVOTERS. Moore voted in 2008 and was cancelled in 2009 for felony conviction. No other voting history appears on the voter's record. Emailed Mr. Waldock. Follow up from Mr. Waldock indicated he thinks there was a 2007 conviction that the SOS office doesn't have record of so forwarded to DCI	No further communication received from Mr. Waldock
10/9/2012	Kyle Jenson	Absentee requesters reporting they did not request an absentee ballot	MM email	Forwarded to DCI	
10/9/2012	Trudy - Wapello County Republican Party Chair	A candidate called a voter on the absentee list and the voter reported they no longer live in Iowa and live in MO. Candidate reported this to Trudy who called Melissa in SOS office	Phone call	Forwarded to DCI	DCI talked to the voter who is back and forth between MO and IA addresses. She did request the absentee ballot
10/18/2012	Liz Lenz	Apparent forgery of VR form and absentee request form. Signatures on those forms do not match voter's signature	email	Forwarded to DCI	DCI contacted the auditor's office who said the situation had been resolved.
10/19/2012	Grant Veeder	More irregularities in absentee ballot requests	MM email	Forwarded to DCI	
10/26/2012	Gene Krumm	Voter registering at address with no dwelling	mail	Forwarded to DCI	
11/6/2012	Douglas R. Brown	Received ballot at the polls with straight-party D oval pre-filled	MM phone call	Forwarded to DCI	

Date of Complaint	Complainant	Nature of Complaint	Method of Receipt	Action Taken	Resolution
11/6/2012	Robert Reedy	Received ballot at the polls with back of ballot pre-filled	MM email	Forwarded to DCI	
11/6/2012	Donna Lawlor	Received ballot at the polls with straight-party option filled in	MM phone call	Forwarded to DCI	
11/8/2012	Kim Owen	4 Felons used EDR to register and vote	email	Forwarded to DCI	
11/8/2012	Michelle Giddings	Voter posted on FB that he lives in NY but voted in IA and helped the state turn "blue"	email	Forwarded to DCI	
11/8/2012	Stephanie Lefl	Someone turned in an absentee ballot on her behalf, she did not vote it	MM phone call	Forwarded to DCI	
11/9/2012	Cindy Reutzell	Felon used EDR to register and vote	email	Forwarded to DCI	
11/9/2012	Cindy Reutzell	Felon used EDR to register and vote	email	Forwarded to DCI	
11/9/2012	Gloria Carr	Felon used EDR to register and vote	email	Forwarded to DCI	
11/9/2012	Paul Kern	College students improperly registered using EDR	MM phone call	Forwarded to DCI	
11/10/2012	Janine Sulzner	2 Felons used EDR to register and vote	email	Forwarded to DCI	
11/13/2012	Robin Detrick	Felon used EDR to register and vote	email	Forwarded to DCI	
11/15/2012	Carla Becker	Voter requested, voted and returned an absentee ballot for daughter who registered on election day and voted in MN	email	Forwarded to DCI	
11/15/2012	Senator Bertrand	Centennial apartments offering incentive for voting	MM phone call	Forwarded to DCI	
11/15/2012	Dave Kushman	College students improperly registered using EDR	MM phone call	Forwarded to DCI	
11/19/2012	Tom O'Neill	4 Felons used EDR to register and vote	email	Forwarded to DCI	
11/20/2012	Julie Chapman	Felon used EDR to register and vote	email	Forwarded to DCI	
11/26/2012	Danielle Weller	Felon used EDR to register and vote	email	Forwarded to DCI	

Date of Complaint	Complainant	Nature of Complaint	Method of Receipt	Action Taken	Resolution
11/27/2012	Beth Isvik	3 EDR voters bouncebacks, no response to follow up notice	email	Forwarded to DCI	
11/27/2012	Julie Lindner-Reed	Felon used EDR to register and vote	email	Forwarded to DCI	
11/28/2012	Eric Loecher	1 EDR voter bounceback, no response to follow up notice	email	Forwarded to DCI	
11/28/2012	Beth Isvik	1 EDR voter bounceback, no response to follow up notice	email	Forwarded to DCI	
11/29/2012	Jennifer Garms	Felon used EDR to register and vote	email	Forwarded to DCI	
11/30/2012	Eric Loecher	1 EDR voter bounceback, no response to follow up notice	email	Forwarded to DCI	
12/4/2012	Judy Howrey	Double voting activity. Absentee ballot signed on 10/31, voted in precinct on 11/6 as well	phone call followed up by email documentation	Forwarded to DCI	
12/7/2012	Jefferson County	Felon used EDR to register and vote	Fax	Forwarded to DCI	