

IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 14-0585

**AMERICAN CIVIL LIBERTIES  
UNION OF IOWA and  
LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS OF IOWA,**

*Petitioners-Appellees*

v.

**IOWA SECRETARY OF STATE  
MATT SCHULTZ,**

*Respondent-Appellant*

On appeal from the Iowa District  
Court for Polk County

District Court Case  
No. CV 009311

Honorable Mary Pat Gunderson,  
Honorable Scott D. Rosenberg,  
District Judges

**BRIEF AMICUS CURIAE OF VOTING RIGHTS ORGANIZATIONS**

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## TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION .....	4
ARGUMENT .....	5
I.    The Power to Make Rules for Removing Voters from the Rolls Does Not Lie with the Secretary of State Acting Alone. ....	5
II.   In Its Attempts to Combat Voter Fraud, Rule 28.5 Impermissibly ENDANGERS Naturalized Citizens’ Right to Vote. ....	6
A.   Rule 28.5 Threatens to Prevent Naturalized Citizens from Exercising Their Right to Vote by Misidentifying Them as “Noncitizen Registered Voters.” .....	8
B.   Rule 28.5 Imposes a Costly Burden on Naturalized Citizens That Impinges upon Their Right to Vote. ....	14
C.   Rule 28.5 Will Have a Chilling Effect on Voter Registration by Newly Naturalized Citizens. ....	17
D.   Rule 28.5 Will Have an Adverse Impact on Latinos.....	19
CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE.....	24

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>Arizona v. Inter Tribal Council of Ariz.</i> , — U.S. —, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013).....	7
<i>Baumgartner v. United States</i> , 322 U.S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525 (1944).....	4
<i>Luria v. United States</i> , 231 U.S. 9, 34 S. Ct. 10, 58 L. Ed. 101 (1913).....	4
<i>Wesberry v. Sanders</i> , 376 U.S. 1, 84 S. Ct. 526, 11 L.Ed. 2d 481 (1964).....	6
<b>STATUTES</b>	
<i>Gonzalez v. Arizona</i> , No. 08-17094, Docket Entry No. 232 (9th Cir. June 7, 2012) (en banc).....	13
<b>OTHER AUTHORITIES</b>	
18 U.S.C. § 1426(h) .....	16, 18
42 U.S.C. § 1973gg <i>et seq.</i> .....	7
42 U.S.C. § 1973gg(b)(1) .....	7
8 U.S.C. § 1427(a) .....	10
8 U.S.C. § 1431(a) .....	16
Iowa Code § 47.7 .....	5
Iowa Code § 47.8 .....	5
Iowa Code § 47.8(1)(b).....	5
Iowa Code § 91D.1 .....	17

## TABLE OF AUTHORITIES (continued)

**Page(s)**

### **RULES**

Iowa Admin. Code r. 721-28.5 .....	passim
Iowa Admin. Code r. 761—601.5(1).....	9
Iowa Admin. Code r. 761—605.25 .....	9

### **TREATISES**

H.R. Rep. No. 103-9, reprinted in 1993 U.S.C.C.A.N. 105 (Feb. 2, 1993) .....	7
Instructions for Form N-600, Application for Certificate of Citizenship, available at <a href="http://www.uscis.gov/sites/default/files/files/form/n-600instr.pdf">http://www.uscis.gov/sites/default/files/files/form/n-600instr.pdf</a> .....	16
<i>Iowa Driver’s License Renewal and Extensions</i> , Iowa Dep’t of Transp., <a href="http://www.iowadot.gov/mvd/ods/renewal.htm">http://www.iowadot.gov/mvd/ods/renewal.htm</a> (accessed Sept. 9, 2014) .....	9
<i>N-565, Application for Replacement Naturalization/Citizenship Document</i> , U.S. Citizenship & Immigration Servs. (last updated Apr. 10, 2013), <a href="http://www.uscis.gov/n-565">http://www.uscis.gov/n-565</a> .....	15
<i>Passport Fees</i> , U.S. Dep’t of State, <a href="http://travel.state.gov/content/passports/english/passports/information/costs.html">http://travel.state.gov/content/passports/english/passports/information/costs.html</a> (accessed Sept. 9, 2014). .....	17
<i>State of Iowa Official Voter Registration Form</i> , Iowa Sec’y of State (revised Apr. 9, 2014), <a href="https://sos.iowa.gov/elections/pdf/voteapp.pdf">https://sos.iowa.gov/elections/pdf/voteapp.pdf</a> .....	14
<i>The State of the Right to Vote After the 2012 Election Before the S. Comm. on the Judiciary</i> , 112th Cong. (Dec. 19, 2012) .....	12

## TABLE OF AUTHORITIES (continued)

	Page(s)
U.S. Census Bureau, <i>2010 Census Summary File 1; Table QT-P3</i> , <a href="http://factfinder2.census.gov">http://factfinder2.census.gov</a> .....	21
U.S. Census Bureau, Voting and Registration in the Election of November 2012 - Detailed Tables, at Table 4b, <a href="http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html">http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html</a> (last visited, Sept. 9, 2014).....	22
U.S. Citizenship & Immigration Servs., Understanding the Systematic Alien Verification for Entitlements (SAVE) Program), <i>available at</i> <a href="http://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/M786_SAVE_Informational_Brochure.pdf">http://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/M786_SAVE_Informational_Brochure.pdf</a> .....	11
U.S. Dept. of Homeland Security, 2012 Yearbook of Immigration Statistics (Supplemental Table 1), <i>available at</i> <a href="http://www.dhs.gov/yearbook-immigration-statistics-2012-naturalizations">http://www.dhs.gov/yearbook-immigration-statistics-2012-naturalizations</a> (last visited Sept. 9, 2014) .....	19
U.S. Dept. of Homeland Security, 2013 Yearbook of Immigration Statistics (Supplemental Table 1), <i>available at</i> <a href="http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations">http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations</a> (last visited Sept. 9, 2014) .....	20
USCIS Form N-565, <i>available at</i> <a href="http://www.uscis.gov/sites/default/files/files/form/n-565.pdf">http://www.uscis.gov/sites/default/files/files/form/n-565.pdf</a> .....	15
<i>USCIS Processing Time Information</i> , U.S. Citizenship & Immigration Servs., <a href="https://egov.uscis.gov/cris/processTimesDisplayInit.do">https://egov.uscis.gov/cris/processTimesDisplayInit.do</a> (accessed Sept. 9, 2014).....	17
<i>Voter Registration Application</i> , U.S. Election Assistance Comm’n, <a href="http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf">http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf</a> .....	15
<i>Yearbook of Immigration Statistics: 2013</i> , U.S. Dep’t of Homeland Security (updated May 28, 2014), <a href="http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations">http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations</a> (Table 22). .....	10

## **INTEREST OF AMICI CURIAE**

This brief is submitted on behalf of organizations engaged in protecting voting rights as amici curiae in support of Petitioners-Appellees. Collectively, these organizations educate about, and assist with, voter registration and participation for eligible persons and for underrepresented portions of the electorate, particularly Latinos. In that capacity, amici organizations have a special interest and an expertise concerning voting rights issues and the detrimental effects of imposing burdensome documentation requirements on the ability of qualified citizens to exercise their right to vote. Because Latinos make up a substantial percentage of Iowa's naturalized citizens, amici organizations are particularly concerned by state statutes, like Iowa's Rule 28.5, that impede the electoral participation of naturalized citizens by making it especially difficult for them to exercise this fundamental right.

The **Mexican American Legal Defense and Education Fund (MALDEF)** is a national civil rights organization established in 1968. Its principal objective is to secure the civil rights of Latinos living in the United States through litigation, advocacy, and education. MALDEF's mission is to foster sound public policies, laws, and programs to safeguard the civil rights

of Latinos living in the United States and to empower the Latino community to participate fully in our society.

**National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund** is the leading nonprofit organization that facilitates full Latino participation in the American political process, from citizenship to public service. Its constituents include the more than 6,000 Latino elected and appointed officials nationwide who serve on bodies including local and state school boards, municipal councils, state legislatures, and the U.S. Congress. For several decades, the NALEO Educational Fund has worked to mobilize eligible Latinos to register and vote, and to build integrated national and local Latino voter education and participation programs, because our nation's growing Latino electorate must be fully engaged in order to ensure the sustained strength of our democracy. In particular, NALEO advocates voter registration procedures that encourage the broadest possible involvement in elections of new and historically under-represented Americans.

**Southwest Voter Registration Education Project (SVREP)** was founded in 1974 and is the largest and oldest non-partisan Latino voter participation organization in the United States. The mission of SVREP is to empower Latinos and other minorities by increasing their participation in the



American democratic process. SVREP accomplishes this by strengthening the capacity, experience and skills of Latino leaders, networks, and organizations through programs that consistently train, organize, finance, development, expand and mobilize Latino leaders and voters around an agenda that reflects their values.

**LatinoJustice PRLDEF** (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. Its continuing mission is to protect the civil rights of all Latinos and to promote justice for the pan-Latino community especially across the Eastern United States. It has worked to secure the voting rights and political participation of Latino voters since 1972 when it initiated a series of suits to create bilingual voting systems throughout the United States.

## INTRODUCTION

The United States has always been a nation of immigrants. It is one of our core values that we ought to treat our newest citizens as the equals, in all respects, of those who hold their citizenship by birth or descent. ““Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.””

*Baumgartner v. United States*, 322 U.S. 665, 673, 64 S. Ct. 1240, 88 L. Ed. 1525 (1944) (quoting *Luria v. United States*, 231 U.S. 9, 22, 34 S. Ct. 10, 58 L. Ed. 101 (1913)).

Iowa Admin. Code r. 721—28.5 (“Rule 28.5”) targets naturalized citizens in Iowa, many of whom are Latino, for extraordinary scrutiny and threats of criminal investigation. In so doing, it falls short of our nation’s ideals and laws, both of which aim to encourage voters to participate in our democracy. And it does so without regard to democratic process. Neither the Iowa General Assembly nor the Iowa Voter Registration Commission has approved of the harsh treatment of naturalized citizens inherent in Rule 28.5. Amici Curiae respectfully submit that Rule 28.5, which is inconsistent with American values and which has a disparate impact collectively on their members, should remain enjoined because it is outside the Secretary of State’s rulemaking powers.

## ARGUMENT

### **I. THE POWER TO MAKE RULES FOR REMOVING VOTERS FROM THE ROLLS DOES NOT LIE WITH THE SECRETARY OF STATE ACTING ALONE.**

The General Assembly provided for a balanced Voter Registration Commission (“VRC”), which the Secretary concedes “has authority to promulgate rules regarding voter registration.” (Secretary’s Proof Brief at 30.) The Secretary, a single official, lacks the checks and balances that the General Assembly designed when it created the VRC. *See* Iowa Code § 47.8(1)(b) (providing that the VRC must be balanced between political parties). And whereas the General Assembly has granted the VRC explicit authority to promulgate rules governing the maintenance of the voter rolls, it has given no such power to the Secretary. *Compare* Iowa Code § 47.8 (vesting the VRC with the authority to “adopt rules”) *with* Iowa Code § 47.7 (delimiting the Secretary of State’s authority as Registrar of Voters while not listing the authority to adopt rules).

Rule 28.5 purportedly is the Secretary’s attempt to prevent foreign nationals from voting. That is a permissible goal, the Secretary asserts, because “[n]o one disputes that foreign national[s] are not legally authorized to register to vote in Iowa or to cast a vote.” (Secretary’s Proof Brief at 35 n.8.)

The problem with Rule 28.5 lies not in its attempt to prevent “voter fraud,” but in the likelihood that it will prevent legitimate voting by naturalized citizens—and no one disputes that naturalized citizens are legally authorized to register to vote in Iowa and then to cast a vote.

The power to balance these two interests—combating voter fraud and safeguarding the right to vote—lies with the General Assembly, or with the bipartisan VRC. The Secretary, a partisan official of the executive branch of government, lacks such authority. Checks on executive power are crucial to prevent the rights of the people from being trampled. That is especially true in the case of the right to vote:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

*Wesberry v. Sanders*, 376 U.S. 1, 17–18, 84 S. Ct. 526, 11 L.Ed. 2d 481 (1964).

## **II. IN ITS ATTEMPTS TO COMBAT VOTER FRAUD, RULE 28.5 IMPERMISSIBLY ENDANGERS NATURALIZED CITIZENS’ RIGHT TO VOTE.**

Rule 28.5 is a barrier to the exercise of the right to vote similar to the one struck down by the Supreme Court of the United States just last year in

*Arizona v. Inter Tribal Council of Ariz.*, — U.S. —, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013). In that case, the Court interpreted the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg *et seq.*, which Congress enacted to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office,” § 1973gg(b)(1), and to end the decades-long history of “restrictive registration laws and administrative procedures” introduced by States “to keep certain groups of citizens from voting.” H.R. Rep. No. 103-9, at 2, reprinted in 1993 U.S.C.C.A.N. 105, 106 (Feb. 2, 1993). In the opinion of the Court, Justice Scalia explained that a state ballot initiative designed to combat voter fraud, which required voters to present proof of citizenship when they registered to vote, was “inconsistent with the NVRA’s mandate.” *Arizona*, 133 S. Ct. 2247, 2257, 186 L. Ed. 2d 239, 254 (quotations omitted).

Rule 28.5 and the ballot initiative struck down in *Arizona* are flip sides of the same coin. Both raise the issue of the propriety of requiring the production of certain documents as a condition of voting. Both do so under the banner of reducing voter fraud. And both elevate that banner over the rights of citizens to vote. The only contrast is that, instead of seeking to prevent voters from registering like in *Arizona*, Rule 28.5 would remove voters who already registered—a distinction without a difference.

Rule 28.5 will have the effect of preventing some citizens from voting—not because they have no right to vote, but only because they failed to comply with the burdens imposed by Rule 28.5 to prove, to the Secretary’s satisfaction, their entitlement to vote. The goal of reducing voter fraud is admirable, but it cannot be used to justify taking rights away from citizens who are not engaged in any such fraud. Protecting citizens’ right to vote is paramount.

**A. Rule 28.5 Threatens to Prevent Naturalized Citizens from Exercising Their Right to Vote by Misidentifying Them as “Noncitizen Registered Voters.”**

The danger inherent in Rule 28.5 is that the Secretary’s eligibility decisions ultimately will be based on information likely to be incorrect. By basing his conclusions on records created for purposes other than determining voting rights and consequently not maintained with the accuracy demanded of a process for adjudicating fundamental rights, the Secretary is apt to get the facts wrong. The reality of that danger is demonstrated by the Secretary’s own factual showing. The Secretary claims to have identified more than 1,200 “foreign nationals” who voted in the 2010 general election. (Respondent–Appellant’s Proof Brief and Request for Oral Argument, p.7; Schultz Affidavit, ¶ 7, App. 76.) But the Secretary has failed to prove that those individuals, in fact, are not U.S. citizens.

What the Secretary actually has proven is only that 1,200 individuals who voted in the 2010 general election would be deemed “noncitizen registered voters” under Rule 28.5—and potentially stripped of their right to vote even if, in fact, they are naturalized citizens. The Secretary identified those 1,200 individuals as foreign nationals by relying on records provided by Iowa’s Department of Transportation (“DOT”). Unfortunately, the DOT is not a reliable source of information necessary to determine citizenship for voters who have naturalized. Although the DOT asks for proof of identity and legal immigration status or citizenship when a driver first applies for his or her license, Iowa Admin. Code r. 761—601.5(1), the DOT does not ask for updated information about citizenship when renewing licenses issued to a lawful permanent resident. Iowa Admin. Code r. 761—605.25. (*E.g.*, Affidavit of Beatriz A. Sandoval, para. 6, App. 157.) The driver’s licenses held by lawful permanent residents are valid between five and eight years. *Iowa Driver’s License Renewal and Extensions*, Iowa Dep’t of Transp., <http://www.iowadot.gov/mvd/ods/renewal.htm> (accessed Sept. 9, 2014).

Every year, roughly two thousand new citizens naturalize in Iowa.<sup>1</sup> The vast majority reside in the U.S. for at least three to five years prior to

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<sup>1</sup> According to the Department of Homeland Security, 2,503 new citizens naturalized in Iowa in 2013. In 2012, it was 2,255. In 2011, 1,840. In 2010, 1,858. In 2009, 2,198. See *Yearbook of Immigration Statistics: 2013*, U.S.

naturalization. 8 U.S.C. § 1427(a), § 1430(a). If they obtained drivers' licenses during that time—and many certainly did—then the DOT's records will continue to list them as foreign nationals rather than United States citizens. Thus, it is entirely possible for the DOT's records to reflect that an individual is a foreign national when, in fact, the individual became a naturalized citizen in the years following receipt of his or her driver's license.

The Secretary does not seriously contend that the DOT records are accurate, but instead asks for faith that a new source of verification will be sufficiently reliable: the United States Customs and Immigration Service's Systematic Alien Verification for Entitlements ("SAVE") system. (Affidavit of Secretary of State Matt Schultz, App. 76). Not so. As with the DOT information, the Secretary seeks to use a resource for a purpose other than the one for which it was designed. The SAVE system was built to check whether certain non-U.S. citizens are qualified for social services benefits, not whether registered voters are U.S. citizens. (Pet'rs Add. Of Exs, Ex. 5, 6, 7, App. 265-74.) In fact, because the SAVE database only contains records of foreign-born persons, the SAVE database cannot verify the citizenship status of individuals born in the U.S. *See* U.S. Citizenship & Immigration

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Dep't of Homeland Security (updated May 28, 2014), <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations> (Table 22).



Servs., Understanding the Systematic Alien Verification for Entitlements (SAVE) Program), *available at* [http://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE\\_Native\\_Documents/M786\\_SAVE\\_Informational\\_Brochure.pdf](http://www.uscis.gov/sites/default/files/USCIS/Verification/SAVE/SAVE_Native_Documents/M786_SAVE_Informational_Brochure.pdf) (listing immigration statuses that SAVE can verify and not including U.S. citizenship other than naturalization or derivative citizenship).

The SAVE system accesses data from at least 14 separate federal agencies, and it does not do so in “real time.” (Id. at Ex. 8, App. 275-76). The reliability of the SAVE system is only as good as its data sources: each of the over 14 databases accessed by the system is susceptible to error. (Pet’rs Add. Of Exs, Ex. 7, 8, App. 271-76.) Significantly, the SAVE website specifically warns government agencies that a negative result from its automated search is not dispositive specifically because of the possibility that its sources of data is out of date, incorrect, or incomplete. (Id. at Ex. 8, App. 275-76.)

The Secretary’s identification of “foreign nationals” is and will continue to be susceptible to “false positive” errors in which the Secretary identifies naturalized citizens as foreign nationals based on outdated records. Notably, other states have experienced similar problems:

- In May 2012, the Florida Department of State originally identified 180,000 registered voters as potential non-citizens. EAC001206-1220,<sup>2</sup> Statement of Nina Perales, Vice President of Litigation of MALDEF in *The State of the Right to Vote After the 2012 Election Before the S. Comm. on the Judiciary*, 112th Cong. (Dec. 19, 2012). Of those, it sent letters demanding proof-of-citizenship to 2,600 registered voters, a disproportionately high number of whom were Latino. *Id.* In the end, only 85 names were removed from the voter rolls. *Id.*
- In Colorado, the Secretary of State claimed there were up to 11,000 non-citizens on the Colorado voter rolls. It sent almost 4,000 letters accusing individual registered voters of non-citizenship. In the end, just 14 voters were removed from the rolls; none had ever voted. *Id.*
- The State of Arizona attempted to support its documentary proof of citizenship law, Proposition 200, with evidence that ten non-citizens

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<sup>2</sup> Citations to documents starting with “EAC” refer to the administrative record supporting the actions of the Election Assistance Commission concerning “Docket No. EAC-2013-0004: State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form.” A copy of the administrative record was filed as Docket entries 132 through 132-17 in *Kobach v. EAC*, No. 5:13-cv-4095 (D. Kan. filed Aug. 21, 2013). Relevant excerpts of the administrative record are filed concurrently herewith in the “Compendium of Documents in Support of Brief Amicus Curiae of Voting Rights Organizations.”

registered to vote in 2005, and nine in 2007. The Ninth Circuit concluded that “Arizona ha[d] not provided persuasive evidence that voter fraud in registration procedures is a significant problem in Arizona....” *Gonzalez v. Arizona*, No. 08-17094, Docket Entry No. 232 at 8 (9th Cir. June 7, 2012) (en banc).

Voter fraud is a less pervasive problem than other types of fraud for a simple reason: the personal benefits of unauthorized voting are greatly outweighed by the personal risks. As Arizona’s State Elections Director wrote in 2001:

It is generally believed that the strong desire to remain in the United States and fear of deportation outweigh the desire to deliberately register to vote before obtaining citizenship. Those who are in the country illegally are especially fearful of registering their names and addresses with a government agency for fear of detection and deportation.

EAC001417-1418, Letter from Jessica Funkhouser, Arizona State Elections Director, Office of the Secretary of State, July 18, 2001. Fines, imprisonment, and deportation continue to be a powerful deterrent to voter fraud.

In this action, the Secretary has failed to prove that any (much less all) of the 1,200 supposed “foreign nationals” he identified were actually ineligible to vote. The unjustifiable reality of Rule 28.5 is that, if it goes into effect, the Secretary will never be required to offer any such proof.

**B. Rule 28.5 Imposes a Costly Burden on Naturalized Citizens That Impinges upon Their Right to Vote.**

Rather than investigating the citizenship of suspected foreign nationals himself, Rule 28.5 is the Secretary's attempt to shift the burden back to certain voters to prove they are citizens. Rule 28.5 gives voters 30 days to supply their proof after being tagged as a "noncitizen," rightly or wrongly, by the Secretary. That procedure for acquiring citizenship documentation and presenting it to the state, however, can be costly and time-consuming even under the best of circumstances. Given Rule 28.5's deadlines and the time-sensitive nature of voting, it simply may be impossible.

Implicit in Rule 28.5 is the premise that sworn statements—such as are routinely accepted as evidence in a court of law—are not enough evidence to establish citizenship. Every registered voter has already attested to his or her U.S. citizenship by signing a voter registration form. *See State of Iowa Official Voter Registration Form*, Iowa Sec'y of State (revised Apr. 9, 2014), <https://sos.iowa.gov/elections/pdf/voteapp.pdf>; *Voter Registration Application*, U.S. Election Assistance Comm'n, [http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration\\_6-25-14\\_ENG.pdf](http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf).

Since sworn statements will not do for naturalized citizens flagged as non-citizens, Rule 28.5 presumably requires some form of independent

documentary evidence of citizenship: either a certificate of naturalization or certificate of citizenship from United States Citizenship and Immigration Services (“USCIS”) or a valid U.S. passport from the United States Department of State. These documents are expensive and time-consuming to acquire and replace:

- Naturalized citizens can evidence their right to vote with a certificate of naturalization. Replacement certificates cost \$345, and obtaining one can take six to eighteen months. *N-565, Application for Replacement Naturalization/Citizenship Document*, U.S. Citizenship & Immigration Servs. (last updated Apr. 10, 2013), <http://www.uscis.gov/n-565>; USCIS Form N-565, *available at* <http://www.uscis.gov/sites/default/files/files/form/n-565.pdf>. (Affidavit of Della M. Arriaga, para. 4.c, App. 283.) Naturalization certificates state on their face that federal law criminalizes the photocopying of naturalization certificates without a lawful purpose,<sup>3</sup> *see* 18 U.S.C. § 1426(h), so naturalized citizens may be deterred from photocopying such documents and have no choice but to present the certificate of

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<sup>3</sup> In fact, the certificate of naturalization itself prominently states in red ink and capital letters: “IT IS PUNISHABLE BY U.S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.” EAC001295-96, Trial Exhibit 711, *Gonzalez v. Arizona*, Case No. cv-06-1268 (D. Ariz, filed May 9, 2006).

naturalization to the Secretary or his agent *in person*, requiring time off from work, arrangements for child care, and travel during business hours—to Des Moines or wherever the Secretary appoints agents to review the certificate.

- Derivative citizens—minors who obtain citizenship under 8 U.S.C. § 1431(a) by living with a parent who naturalizes—can evidence their right to vote with a certificate of citizenship. These certificates cost \$550 or \$600, and they currently take the Des Moines USCIS field office five months to process. *See* Instructions for Form N-600, Application for Certificate of Citizenship, available at <http://www.uscis.gov/sites/default/files/files/form/n-600instr.pdf> (listing filing fee and requirements for certificate of citizenship); *USCIS Processing Time Information*, U.S. Citizenship & Immigration Servs., <https://egov.uscis.gov/cris/processTimesDisplayInit.do> (accessed Sept. 9, 2014) (listing processing time for Form N-600).
- Individuals can also evidence their right to vote with a U.S. passport. Normally, U.S. passport applications take four to six weeks to process. (Affidavit of Della M. Arriaga, para. 4.b., App. 283.) The process can be expedited, but doing so is expensive: fees could include \$110 for the passport, \$25 for the mandatory execution fee,

\$14.85 for overnight delivery, \$60 for expedited service, and \$150 for a file search, totaling just under \$500. *Passport Fees*, U.S. Dep't of State, <http://travel.state.gov/content/passports/english/passports/information/costs.html> (accessed Sept. 9, 2014).

Every citizen has the right to vote. Not every citizen has hundreds of dollars to spend on documentation to prove citizenship as a condition of voting. The minimum wage in Iowa is \$7.25 an hour. Iowa Code § 91D.1. A citizen earning minimum wage would need to work between 47 and 82 hours to pay the document fees identified above. Citizens should not be forced to choose between feeding their families or jumping through the Secretary's hoops to exercise their right to vote.

**C. Rule 28.5 Will Have a Chilling Effect on Voter Registration by Newly Naturalized Citizens.**

Beyond the financial burden Rule 28.5 places on naturalized citizens, the rule is likely to decrease these voters' rates of registration and turnout by threatening voters with prosecution if they refuse to relinquish their right to vote. Rule 28.5 provides for the sending of notices to registered voters demanding that the voter prove citizenship, deregister, *or face criminal investigation*. Rule 28.5(2)–(3).

Rule 28.5 gives individuals two ways to avoid the understandable fear of facing a criminal investigation: prove citizenship or give up the right to

vote. The first can be expensive, time-consuming, and uncertain. The second is costless, immediate, and certain. For an individual wishing to avoid criminal entanglements, the safest course of action is clear.

The threat of criminal prosecution of individuals who do not sufficiently prove their citizenship is compounded by laws that criminalize the copying, printing, or photographing of a certificate of naturalization. *See* 18 U.S.C. § 1426(h). Naturalized citizens may be unwilling to photocopy their certificates to prove their citizenship for fear of criminal prosecution. EAC001295-1296, Trial Exhibit 711, *Gonzalez v. Arizona*, Case No. cv-06-1268 (D. Ariz, filed May 9, 2006). And if they do nothing, they also risk criminal prosecution under Rule 28.5. That leaves giving up the right to vote as the only certain method of avoiding prosecution.

“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.” (Affidavit of Joseph G. Henry, para. 5, App. 93.) “[T]he 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.” (Affidavit of Della L. Arriaga, para. 8, App. 284.) The natural and predictable result of Rule 28.5, therefore, will be the loss of the right to vote by citizens who are entitled to it.



**D. Rule 28.5 Will Have an Adverse Impact on Latinos.**

The negative effects discussed above will be felt by all racial groups, but the impact will be felt particularly strongly by the Latino community.

A substantial percentage of newly naturalized citizens in Iowa are Latino: individuals from Latin American countries made up at least 594 (26.3%) of the 2,255 newly naturalized citizens of Iowa in 2012, and at least 613 (24.5%) of the 2,503 newly naturalized citizens of Iowa in 2013. U.S. Dept. of Homeland Security, 2012 Yearbook of Immigration Statistics (Supplemental Table 1), *available at* <http://www.dhs.gov/yearbook-immigration-statistics-2012-naturalizations> (last visited Sept. 9, 2014); U.S. Dept. of Homeland Security, 2013 Yearbook of Immigration Statistics (Supplemental Table 1), *available at* <http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations> (last visited Sept. 9, 2014). Because Rule 28.5 is particularly likely to misidentify newly naturalized citizens as foreign nationals, these U.S. citizens face a strong risk of losing their proudly-won right to vote.

The burden of costly documentation would also fall more heavily on Iowa's Latino minority. In *Gonzalez v. Arizona*, Case No. cv-06-1268 (D. Ariz, filed May 9, 2006) (the "Gonzalez case"), expert evidence confirmed that the burden of providing documentary proof-of-citizenship (which is the

effect of Rule 28.5) falls most heavily on the poor and Latinos. In that case, Dr. Louis R. Lanier submitted a report containing his analysis of voter registration applications that were rejected pursuant to Arizona's Proposition 200. *See* EAC001390-1403, Fourth Supplemental Report of Louis R. Lanier, Ph.D. Dr. Lanier's analysis showed that Proposition 200 disproportionately resulted in rejecting Latino applicants and applicants who came from areas of Arizona where the population was poorer and less educated. *Id.* The rejected registration applicants largely originated from areas where citizens were most likely to rely on public transportation, particularly areas more urban than statewide averages. *Id.* These results are unsurprising—disadvantaged citizens who lack financial resources and flexible work schedules will have greater difficulty submitting the required documents. EAC001175-1180, Declaration of Lydia Camarillo, Vice President of Southwest Voter Registration Education Project; EAC001182-1185, Declaration of Irene Caudillo, President and CEO of El Centro. Dr. Lanier also found that Latino citizens were more likely to have their registration applications rejected as a result of documentary proof of citizenship requirements, in comparison to their representation among all registration applicants. Additionally, Dr. Lanier found that Latino citizens

are less likely than non-Hispanics to achieve success in a subsequent registration attempt. EAC001390-1403.

In the same way as Arizona's Proposition 200, Rule 28.5's requirement of documentary proof of citizenship will disproportionately affect Latino citizens. And it will exacerbate the already low rate of Latino voter registration. As of the 2010 Census, persons of Hispanic or Latino origin accounted for 5% of the total population of Iowa. U.S. Census Bureau, *2010 Census Summary File 1; Table QT-P3*, <http://factfinder2.census.gov> (generated by Monica Voicu Denniston; using American FactFinder on Sept. 9, 2014). But Latinos made up less than 2% of the registered Iowa electorate in 2012. U.S. Census Bureau, Voting and Registration in the Election of November 2012 - Detailed Tables, at Table 4b, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html> (last visited, Sept. 9, 2014). Stated differently, only about 43% of eligible Latinos in Iowa are registered to vote whereas roughly 80% of eligible non-Hispanic whites are registered in Iowa. *Id.* Rule 28.5 will make Latinos' underrepresentation even worse.

## **CONCLUSION**

As citizens of the United States, we all enjoy equal dignity in the eyes of the law. It does not matter whether we gained our citizenship through

naturalization, descent, or place of birth—we are all Americans. Rule 28.5 singles out Iowa’s naturalized citizens for financial burdens, demands for proof, and threats of criminal investigation. Rule 28.5 is exactly the kind of ill-considered rule the General Assembly meant to prevent when it vested the power to regulate voter registration in the VRC rather than the Secretary of State. The undersigned friends of the court request that this Court affirm the conclusion of the District Court of Polk County and hold that Rule 28.5 was adopted without proper authority.

Respectfully,

Dated: October 23, 2014

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