



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:

Sarah Reisetter
Director of Elections
Office of the Secretary of State

Larry Johnson
Administrative Rules Coordinator
Office of the Governor

Senator Wally E. Horn
Chair, Administrative Rules Review Committee

Joe Royce
Legal Counsel, Administrative Rules Review Committee

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.¹ 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/?odyssey=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

¹ 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. 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. 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.² *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.

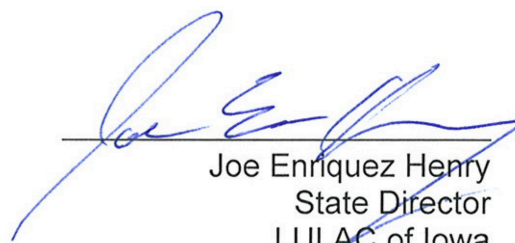
² The Secretary stated that when his office compared the DOT's list of foreign nationals who had obtained a license with the state's voter registration records, the "comparison revealed that 1,208 foreign nationals voted in the 2010 election." Affidavit of Secretary of State Matt Schultz. Such a conclusion 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.

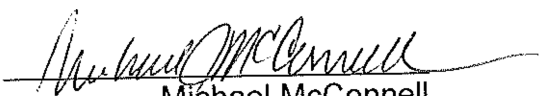
Conclusion

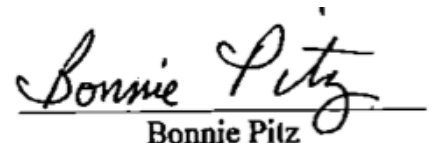
For the foregoing reasons, the undersigned organizations request that the Secretary of State terminate the rulemaking process noticed as ARC 0271C in the Iowa Administrative Bulletin August 8, 2012, a public hearing with the Secretary of State, and a public hearing with the Administrative Rules Review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

Respectfully,


Ben Stone
Executive Director
ACLU of Iowa
ben.stone@aclu-ia.org
(515) 243-3988


Joe Enriquez Henry
State Director
LULAC of Iowa
joehenry@iowalatinos.org
(515) 208-7312


Michael McConnell
American Friends Service Committee
Midwest Region
MMcconnell@afsc.org
(312) 427-2533



Bonnie Pitz
LWVIA President
League of Women Voters of Iowa
dbpitz@iowatelecom.net
(641) 275-1712



Connie Ryan Terrell
Executive Director
Interfaith Alliance of Iowa
connie@interfaithallianceiowa.org
(515) 279-8715



Kelli Soyer
Executive Director
National Association of Social Workers, Iowa Chapter
exec@iowanasw.org
(515) 277-1117

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

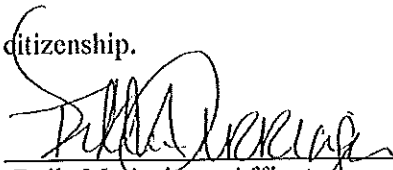
AFFIDAVIT

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"

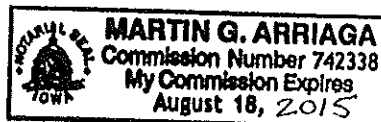
STATE OF IOWA)
)
COUNTY OF POLK)

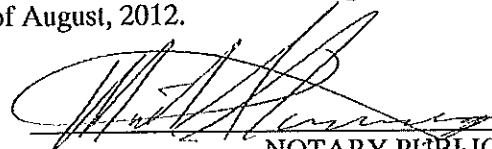
1. My name is Della M. Arriaga and I am the owner and president of Arriaga Law Office, P.C. I have practiced law in the State of Iowa for over six years having been assigned the Bar # AT 0008767.
2. My law office works primarily with immigration law and I have represented hundreds of individuals with 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 26TH day of August, 2012.




NOTARY PUBLIC

AFFIDAVIT

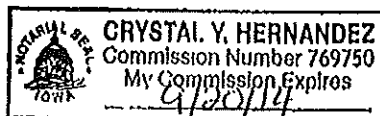
Affidavit in Support of the ACLU of Iowa's Public Comments in Opposition to Administrative Rule
721—28.5 (47, 48A) "Noncitizen registered voter identification and removal process"

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 21th day of August, 2012.




NOTARY PUBLIC

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

V.

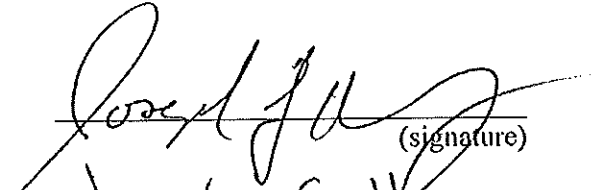
Respondent.

**AFFIDAVIT IN SUPPORT OF
RESISTANCE TO MOTION
TO DISMISS**

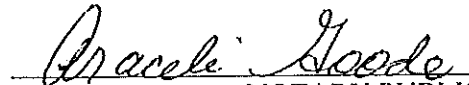
STATE OF IOWA)
)
COUNTY OF POLK)

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.


(signature)
Joseph G. Henry
(printed name)

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


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.

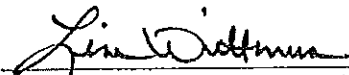
15. On July 20, I promulgated two administrative rules implementing Iowa's access to SAVE as outlined to DHS and submitted a new application for SAVE access incorporating the new rules.
16. Due to the time constraints of the forthcoming general election and the statutory deadline for challenging a voter 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.



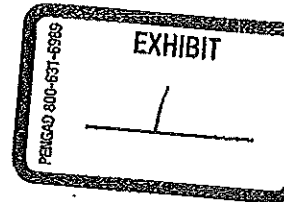
MATT SCHULTZ

Subscribed and sworn to before me on this 16th 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, 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 USCIS 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

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

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.

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

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.

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

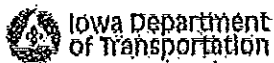
Here is that file we discussed in the meeting today.

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.



Karen Ballard

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

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

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

To: 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]

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

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]

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

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

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]

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]

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

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 Relsetter

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

Ms. Relsetter,

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

From: Relsetter, Sarah [SOS] [<mailto:Sarah.Relsetter@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
sarah.relsetter@sos.iowa.gov

 Please consider the environment before printing this e-mail.

NOTICE: Subject to the requirements of the Iowa Open Records Law, this message and accompanying documents are covered by the Electronic Communications Privacy Act, 18 U.S.C. Subsection 2510-252; and contains information intended for the specified individual(s) only. This information may be confidential. If you are not the intended recipient or an agent responsible for delivering this message to the intended recipient, you are hereby notified that you have received this message in error and that any review, dissemination, copying or the taking of any action based on the contents of this message may be prohibited. If you have received this message in error, please notify me immediately by e-mail and delete this message.

Email secured by Check Point

Email secured by Check Point