

ACLU of Virginia

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The Honorable Robert F. McDonnell
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, VA 23219

March 11, 2013

RE: Veto SB 1077, SAVE Program

Dear Governor McDonnell:

The ACLU of Virginia, along with the organizations listed below, are writing to urge you to veto SB 1077. The bill requires the Virginia State Board of Elections (SBE) to use the federal Systematic Alien Verification for Entitlements Program (SAVE) for the purposes of verifying that voters listed in the Virginia voter registration system are U.S. citizens, if permitted to do so by the U.S. Department of Homeland Security (DHS). The legislation further requires the Department of Motor Vehicles (DMV) to collect non-citizens' alien registration numbers and submit the information to the SBE. Given that there is no evidence that non-citizens are attempting to vote in Virginia, there is no justification for this legislation, which will almost certainly cause eligible voters to be disenfranchised.

SAVE is a fee-based system designed to query the DHS's various databases--a compilation of over 100 million records from at least twelve different databases--to verify a person's immigration status for the purpose of eligibility for public benefits, licensing, and other lawful purposes. DHS emphasizes that the program is "alien-number-driven"; that is, immigrants are primarily identified by a unique number given to each immigrant, and not by the use of biographical information such as a name or birth date.¹ Biographical information should only be used as a secondary means of verification because of the likelihood of multiple name and birth date matches.

The use of SAVE to verify citizenship for voting purposes has an unacceptably high likelihood of error. Much of the information in the system is based on immigration information in a state's records that had been previously submitted for other reasons—such as an application for a driver's license--thereby reflecting an individual's immigration status at that particular, initial interaction. As a result, individuals who became naturalized citizens after they obtained drivers' licenses may lose their right to vote. Another group of citizens vulnerable to losing their right to vote are those whose last names and birth dates are the same as people in the system. In large populations, the probability is high.² Eligible voters may learn of errors only when attempting to vote with no time to correct any problems with the SBE or USCIS.

¹ Fatma Marouf, *The Hunt for Noncitizen Voters*, 65 STAN. L. REV. ONLINE 66 (October 31, 2012). Available at: <http://www.stanfordlawreview.org/online/hunt-noncitizen-voters>

² *Id.*

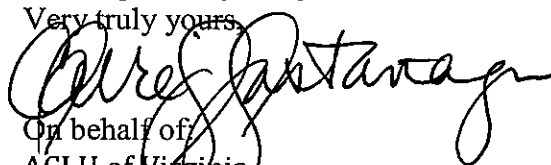
In Florida where this program was implemented, it found only 207 non-citizens registered to vote (.0018% of the electorate of nearly 11.5 million registered voters),³ and resulted in disenfranchisement of thousands of naturalized citizens who became naturalized after applying for and receiving state driver's licenses or other ID linked to the voter registration system. Florida's experience proves that use of the SAVE Program by SBE is far more likely to prevent eligible Virginians from voting than to find non-citizens illegally registered to vote. Notably, subsequent investigations in Florida have not uncovered non-citizens intentionally registering or voting while aware that they were not eligible to do so.⁴

Virginia law requires registrars to notify challenged voters whose names will be removed from the voter rolls promptly, and gives the voter only 14 days from the date of the mailing to provide to the registrar a "sworn statement that he is a United States citizen." The law requires cancellation of the registration of a person who does not respond in 14 days. Given the significant likelihood that eligible voters will be identified wrongly as non-citizens by the use of SAVE, the short notice period leading to automatic cancellation of registration may well disenfranchise voters whose only fault is that they took a business trip or vacation at the wrong time or otherwise failed to respond to a notice that they may simply have believed was a mistake.

Finally, according to a 2011 DHS Privacy Impact Assessment, SAVE does not include any due process or privacy protections for use of the system by state and local agencies beyond verifying eligibility for public benefits.⁵ Notice is not provided to affected individuals and there is no redress for denials or improper use of the program. The risk of misuse of data obtained from SAVE is yet another reason the system should not be used for verification of voter eligibility. The SAVE Program is far more likely to prevent eligible Virginians from voting than to identify non-citizens illegally registered to vote. The disenfranchisement of eligible voters is almost certain to lead to litigation.

We respectfully ask you to veto SB 1077. Thank for your consideration of this matter.

Very truly yours,



On behalf of:
ACLU of Virginia
Virginia AFL-CIO

Alliance for Progressive Values
NAACP Virginia State Conference
LatinoJustice PRLDEF
League of United Latin American Citizens (LULAC)
Legal Aid Justice Center
Virginia Coalition of Latino Organizations (VACOLAO)
Central Virginia Chapter A. Philip Randolph Institute

Virginia New Majority
Virginia League of Women Voters
Virginia Organizing
LULAC Council 4609
Virginia Civic Engagement Table
NAKASEC
Richmond Branch NAACP
Progress VA

³ Immigration Policy Center, *Using the Systematic Alien Verification For Entitlements (SAVE) Program for Voter Eligibility Information*, (Aug. 2, 2012). Available at: <http://www.immigrationpolicy.org/just-facts/using-systematic-alien-verification-entitlements-save-program-voter-eligibility-verificat>

⁴ Justin Levitt, *The Truth About Voter Fraud* 11, Brennan Center for Justice (2006), available at http://brennan.3cdn.net/e20e4210db075b482b_wcm6ib0hl.pdf, supra note 10, at 18.

⁵ Immigration Policy Center, *Using the Systematic Alien Verification for Entitlements (SAVE) Program for Voter Eligibility Information*, (Aug. 2, 2012). Available at: <http://www.immigrationpolicy.org/just-facts/using-systematic-alien-verification-entitlements-save-program-voter-eligibility-verificat>