



“Motor Voter” in the States and Noncitizens on Voting Rolls

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Thank you, Mr. Chairman, for inviting me to submit written testimony on the topic of voter registration and the department of motor vehicles. I am Wendy Underhill, program director for elections and redistricting at the National Conference of State Legislatures (NCSL).

NCSL is the nation’s bipartisan organization that supports the work of both legislators and legislative staff. We are headquartered in Denver, Colorado, where I work. We do not make recommendations on policy; instead we provide 50-state research and analysis.

My testimony today focuses on the National Voter Registration Act (NVRA), and how election officials work with motor vehicle agencies.

The NVRA was enacted in 1993 and is often referred to as “motor voter” because of its requirement that voter registration opportunities be provided at motor vehicle agencies. In addition to motor vehicle agencies, the NVRA also requires states to designate offices that provide public assistance and offices that provide services to persons with disabilities as voter registration agencies, and it allows states to designate at their discretion other agencies, such as public libraries, schools, fishing and hunting license bureaus, unemployment compensation offices, etc.

I will address only the aspects of the NVRA that relate to motor vehicle agencies. These apply to 44 states and the District of Columbia. Six states (Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin and Wyoming) are exempt from the NVRA because they either had no voter registration requirements (North Dakota) or offered election-day registration in the 1990s. The NVRA applies to federal elections but in effect covers all voter registrations.

The federal law requires an application for a state driver’s license (or non-driver ID) to serve as a simultaneous voter registration application. These driver’s license applications must also serve to update existing voters’ information. For example, if a voter who is already registered in Pennsylvania moves to a different address and updates his driver’s license with that address, this application would also serve as a notification to election officials that the voter’s address has changed.

The exact wording of the law is: “Each State motor vehicle driver’s license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall

serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application. (2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.”

The NVRA explicitly requires voter registration forms to be a part of an application for a driver’s license and not a separate form, and not to duplicate any information elsewhere on the form. The voter registration section of the form may require only the minimum amount of extra information necessary to prevent duplicate registrations, and to enable state election officials to assess the eligibility of the applicant (NVRA Sec. 5 (c)).

Regarding this eligibility piece, the NVRA requires that the voter registration portion of the form includes a statement with each eligibility requirement, including citizenship. It also calls for an attestation that the applicant meets the requirement, under penalty of perjury (NVRA Sec. 5 (c)(2)(C)).

While states have made voter registration available at DMVs, many have not followed the letter of the law. Some states do not integrate voter registration into the drivers’ license process and instead have made voter registration forms available in the DMV office. In other words, people who transact business with the DMV have not always been offered the opportunity to register to vote, even though federal law requires it—and when they have been offered registration, sometimes it has been accomplished by handing them a separate form, which violates the NVRA requirements. These lapses have led to lawsuits in some states, and to many upgrades in recent years.

Historically, the process of exchanging forms between the DMV and election offices has been paper-based, but it is increasingly becoming an electronic process. With paper, voter registration forms were collected at the DMV and periodically submitted to the voter registration offices. A modern electronic exchange of information reduces errors that might be made when re-keying voter information, and saves DMV and voter registration staff time. It also can smooth out the work load on both sides.

Compatibility of systems can be an issue. To solve this problem in Delaware, the two agencies worked closely together to integrate their systems. About five years ago Delaware developed a digital system called “eSignature” that requires those transacting business at the DMV to move through a series of screens to obtain, renew or update their driver’s license or state ID. Within the series of screens, they must view a screen that allows them to register to vote (and choose a political party), update an existing registration, or decline to register. Their DMV transaction cannot be completed without this step. There is a real-time electronic link between the election department and the department of motor vehicles that allows voter registrations to be transmitted instantaneously.

In the last five years many states have followed Delaware’s lead in modernizing the NVRA process by moving toward electronic transmission of the voter registration process. A best practice when shifting to an electronic process is to ask a citizenship question at the beginning. The answer—yes or no—will

determine whether the person is offered the opportunity to register to vote or update their voter registration, or not.

Verifying that a potential voter is a citizen should occur at several steps in the process, not just at the start. Due to human or systemic errors, it is not uncommon that small numbers of noncitizens get on the voter rolls. I will address problems and solutions in Vermont, Nevada and Colorado.

Vermont implemented an “automatic registration” system this year to better streamline the exchange of information between the DMV and election officials. When the system was first launched it apparently did not have controls to keep noncitizens from becoming registered. The flaw was caught after the system had been in operation for 18 days. In Vermont, municipalities run elections. When the state sends information about new voters to the municipalities, the municipalities send a confirmation letter to the new voters—and it was because of those letters that the programming error was found. No instances of voting by noncitizens have been found.

Communication problems between the DMV and election offices, and misunderstandings about the respective roles and responsibilities of each, can also potentially lead to noncitizens getting on the voter rolls. For example, in Nevada the secretary of state’s office identified at least three instances in the 2016 election of non-citizens who voted, and eighty who were on the voter rolls. The secretary of state’s office is not providing comments on the matter, but from media reports it appears to be an issue of miscommunication. Staff at the department of motor vehicles were forwarding registration applications from people who had green cards. These people are legal to get drivers’ licenses, but not to vote, of course. The DMV officials asserted that they are required by law to forward all registration applications to the secretary of state, and it is the job of the secretary of state’s office (or, the counties more precisely) to vet those applications. It seems that this was a systemic glitch—there was no programming/coding safeguard against offering registration to noncitizens.

Now I will turn to Colorado. My source for this information is Judd Choate, the state election director, who reports to the secretary of state. I have summarized information he relayed to me by phone.

Several years ago, Colorado’s then-Secretary of State Scott Gessler had his staff conduct an extensive investigation of the voter rolls to see if noncitizens were getting on them through the DMV avenue. The staff received an initial report of 14,000 people who had shown a noncitizen credential when getting a driver’s license at some point between 2000 and 2012. By the time the list of voters was created, well over 90 percent had become citizens.

From the remainder, the secretary of state’s staff removed duplicates. Of the rest, most had never voted and were categorized as inactive and thus were soon to be purged according to NVRA requirements. That left 150 potential matches. The state sent notices to those people saying, in essence, “we think you are not a citizen and yet you are on the voter rolls.” Of those, 20 had become citizens after their original (in error) registrations and before the letters went out. For the remainder, the state sent the information to the counties for follow-up.

The counties set up hearings for all the unresolved cases. Most people did not show up for the hearings, having moved out of state. Of the remaining 35, there were none who had cast votes.

Since this effort, and because of the heightened desire to ensure that noncitizens are not registered to vote, Colorado has implemented several procedural changes. As mentioned earlier, it asks the citizenship question at the beginning of the DMV process, and therefore avoids offering registration to noncitizens as best it can.

Also, Colorado conducts periodic checks of the voter rolls against the Systematic Alien Verification for Entitlement (SAVE) list from the DHS. This list can only be searched with a federally-designated number that is provided to legal noncitizens.

When a noncitizen applies for a driver's license in Colorado, that SAVE number is captured. The state voter registration database includes the document used for identification purposes by new driver (birth certificate, passport, driver's license in another state, SAVE number). In all the cases where the SAVE number is listed, staff check those numbers against the SAVE database. If it appears that a person with a SAVE number is on the voter rolls, staff call them to confirm their citizenship status. Most have become citizens, and registered to vote at their citizen ceremony or elsewhere. (Moving to citizenship status is not captured in SAVE.) The other portion of people with a SAVE number say registering was inadvertent, and are removed.

To sum up, it is not uncommon for some number of noncitizens to be offered the opportunity to register to vote at the DMV, even though this is clearly not the intention of the NVRA. States can take steps to reduce this problem greatly by adopting practices that address directly the citizenship question, by asking it first, and following up on all suspected cases.

One resource to consider is the report, Measuring Motor Voter, produced in 2014 by The Pew Charitable Trusts.

This concludes my written testimony. I have included a list of resources for your reference, and I would be happy to answer any additional questions that you might have.

Resources

- The Department of Justice Q&A on the NVRA:
 - <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>
- Link to the NVRA as enacted:
 - <https://www.congress.gov/103/bills/hr2/BILLS-103hr2enr.pdf>
- The Pew Charitable Trusts' Report, Measuring Motor Voter:
 - <http://www.pewtrusts.org/~media/assets/2014/05/06/measuringmotorvoter.pdf>