



## *LIFT Perspective*

*Individual Liberties Series*

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# **Porous Borders, Porous Elections: The Imperative to Verify Voters' Citizenship**

### **Primary Recommendations:**

#### *1. Place Citizenship Status on Driver's Licenses and Texas Identification Cards*

Amend Transportation Code §521.121(3) by adding "citizenship status" as a feature that a Driver's License must include. Texas Identification Cards should contain the same information.

#### *2. Require Voters to Present a Driver's License or Texas Identification Card at their Polling Place*

Amend Election Code §63.001(b) so that, on offering to vote, a voter must present the voter's voter registration certificate *and* a valid, unexpired Texas Driver's License or a valid, unexpired Texas Identification Card that proves the voter is a United States citizen.

#### *3. Statewide Investigation of Non-Citizens on Voter Rolls*

In the light of the number of individuals who have been removed from the voter rolls in Harris and Bexar counties, the Office of the Secretary of State should perform a statewide audit of voter rolls in order to verify the citizenship of all voters in Texas.

## **Background**

The most paramount of our democratic rights, the right to vote, is guarded indifferently. Federal and state laws are clear in their intent: only citizens may vote. In practice, however, our polling places are just as porous as are our borders.

In fact, the U.S. Department of State will not accept a voter registration certificate as proof of citizenship when applying for a passport<sup>1</sup>. That healthy skepticism is justified because of significant gaps in Texas election law and enforcement procedures.

The illegal alien population in Texas is estimated to be over 1.6 million<sup>2</sup>, second in size only to the illegal alien population of California. That estimated illegal alien population accounts for over 7% of the total state population of 22,859,968<sup>3</sup>. With such a sizeable number of illegal aliens residing in the state, their potential impact on election outcomes is too serious to ignore.

## **Opening the Door to Fraud**

On June 22, 2006, Harris County Tax Assessor-Collector and Voter Registrar Paul Bettencourt testified before the U.S. House Administration Committee that in 2005, he identified at least 35 foreign nationals who either applied for or *received* voter registration cards<sup>4</sup>. Mr. Bettencourt told the Committee that a Brazilian woman registered, had her registration cancelled, re-registered claiming to be a citizen, and had her registration cancelled again. While registered, *she voted at least four times* in general and primary elections. Since 1992, Mr. Bettencourt's office has cancelled 3,742 registered voters for non-citizenship; 683 of those non-citizenship cancellations have occurred from the year 2000 to present<sup>5</sup>.

Harris County officials discovered non-citizens on the voter rolls because of the cooperation of its District Clerk, Charles Bacarisse, who was receiving returned jury summons with a unique excuse: people were admitting that they were not citizens to avoid serving on a jury. The list of potential jurors, however, is culled from the list of registered voters pursuant to Government Code §62.001.

Unfortunately, Harris County is not the only county encountering this problem. In response to a public information request, the Texas Conservative Coalition Research Institute learned that between 2003 and 2005, 303 people were removed from the voter rolls in Bexar County because they were not citizens. Before being cancelled, 41 of those

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<sup>1</sup> U.S. Department of State, "How to Apply in Person for a Passport"; [http://travel.state.gov/passport/get/first/first\\_830.html](http://travel.state.gov/passport/get/first/first_830.html)

<sup>2</sup> Federation for American Immigration Reform, "Extended Immigration Data for Texas", 2005 FAIR estimate; [http://www.fairus.org/site/PageServer?pagename=research\\_research2891](http://www.fairus.org/site/PageServer?pagename=research_research2891)

<sup>3</sup> U.S. Census Bureau, "State & County QuickFacts; Texas"; <http://quickfacts.census.gov/qfd/states/48000.html>

<sup>4</sup> Testimony of Paul Bettencourt Before Committee on House Administration, June 22, 2006; <http://www.hctax.net/forms/testimonyofPaul.pdf>

<sup>5</sup> Voter registration records provided by the Harris County Voter Registration Department

303 non-citizens illegally cast ballots in bond elections, runoffs, primaries, and general elections. The majority of these people were removed because they had rejected jury summons on the grounds that they were not citizens. These figures, together with those described above in Harris County, indicate that the problem of non-citizens being registered to vote must be addressed.

**NOTE:** Public information requests were also filed with **Tarrant County, Travis County, Dallas County, Jim Wells County and Collin County**. Tarrant County refused to provide the information. Dallas and Jim Wells counties failed to respond. Collin and Travis counties responded, but to date, the requested information has not been received.

### **Laws without Meaning**

This fraud flies in the face of the unambiguous language of the United States Constitution and Texas Constitution: voting is a right reserved only for U.S. citizens. Sections 11.002(1) and (2) of the Texas Election Code list the top two qualifications for voting: age (18 or over) and citizenship (United States). The application to register to vote, available online through the Secretary of State website, begins with the question: “Are you a United States Citizen?”

The Office of the Secretary of State, which oversees the administration of elections, however, confirms that citizenship verification relies on nothing more than the honor system. In a June 15, 2006 letter, the Secretary of State’s office states:

“[U]nder current Texas voter registration guidelines, there is no formal verification of an applicant’s citizenship status... Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register (one of which is U.S. citizenship) and that he or she has provided accurate/truthful information, the application is processed on those merits.”<sup>6</sup>

Pursuant to the Help America Vote Act (HAVA), the Texas Secretary of State checks voter registration applications against Driver’s License and Social Security databases<sup>7</sup>. While this may serve to verify the name and address of an applicant, it does not prevent foreign nationals from registering to vote since both Social Security Numbers (SSN) and Driver’s Licenses are available to non-citizens. In fact, the Transportation Code contains an entire section (§521.0305) dedicated to agreements with foreign countries under which the Department of Public Safety (DPS) may issue Driver’s Licenses to foreign nationals.

Importantly, the DPS does not record the citizenship status of the Driver’s License applicant, meaning that even if an applicant for a Driver’s License provides a permanent

<sup>6</sup> Ann McGeehan, Director of Elections, Secretary of State; letter dated June 15, 2006

<sup>7</sup> Help America Vote Act of 2002, Section 303(a)(5)(A)(i), Page 116 STAT. 1711

[http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt)

resident card (green card) or visa as proof of identity, DPS does not record that the applicant is a non-citizen<sup>8</sup>. Therefore, the Office of the Secretary of State cannot determine the citizenship status of an applicant when it cross-checks a voter registration application against DPS Driver's License records.

Driver's Licenses, Texas Identification Cards, and SSN's are all available to non-citizens (either legally or fraudulently). A non-citizen, however, need not have a SSN or Driver's License in order to vote since HAVA and the Texas Election Code make special provisions for persons without either a Driver's License or SSN<sup>9</sup>.

The list of identification acceptable in lieu of a Driver's License or SSN includes utility bills, bank statements, and pay checks. However, delivery of electricity and gas service for an apartment or home are not predicated on citizenship. Indeed, any person with the financial wherewithal, including an illegal alien, can obtain utility service. Similarly, a foreign national with or without a permanent resident card or visa can work and earn a pay check. The items acceptable as ID in lieu of a Driver's License or SSN have nothing to do with the citizenship status of the applicant.

The lack of any explicit statutory mandate and procedural requirement to verify the qualification of voters leaves voting booths wide open to illegal aliens and other non-citizens [and other forms of fraud], stripping constitutional rights of any real value.

### **Recommendations**

#### *Place Citizenship Status on Driver's Licenses and Texas Identification Cards*

Pursuant to the REAL ID Act of 2005 and the rules drafted by the U.S. Department of Homeland Security, the Department of Public Safety will be required to verify the citizenship or legal residency status of all applicants for a Driver's License or Texas Identification Card by 2008. The REAL ID Act, however, does not require the cards to list citizenship status. The Texas Legislature should take the next logical step by requiring that DPS list on all Driver's Licenses and Texas Identification Cards whether or not the holder of the card is a United States citizen, just as it does with the height, weight and eye color of each person. Non-citizens who can prove they are in Texas legally will still be able to obtain a Driver's License or Texas Identification Card, but it will label them as non-citizens in order to prevent them from voting.

- See Transportation Code §521.121(3).

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<sup>8</sup> Claire McGuinness, Senior Staff Attorney, Drivers License Division, Texas Department of Public Safety; Submitted Friday, June 2, 2006; response received Tuesday, June 13, 2006.

<sup>9</sup> Help America Vote Act of 2002, Section 303(a)(5)(A)(ii); See also: Texas Election Code §13.002(c)(8)

*Require Voters to Present a Driver's License or Texas Identification Card at their Polling Place*

In order to vote, the Legislature should require each voter to present a photo ID at their polling place. Americans must present photo identification for even the most mundane daily activities:

- to rent a DVD,
- to check out a library book,
- to board an airplane,
- to buy alcohol or tobacco
- to belong to bulk retail clubs such as Sam's Club.
- to purchase cold medicines (such as Sudafed), pursuant to HB 164 (79R)

House Bill 1706 (Denny, 79R) can serve as a guide for this legislation.

- See Election Code §63.001(b).

*Direct the Office of the Secretary of State to Undertake a Study of Fraudulent Voter Registration*

In the light of the number of individuals who have been removed from the voter rolls in Harris and Bexar counties, the Office of the Secretary of State should perform a statewide audit of voter rolls in order to verify the citizenship of all voters in Texas. The names of those who are found to be fraudulently registered should be turned over to county prosecutors in order for perjury proceedings to be initiated.

**Answering Anticipated Objections**

Asking a voter to present a Driver's License or other government identification is not a barrier to voting.

In fiscal year 2005, there were 14.4 million valid unexpired Driver's Licenses issued to Texans of voting age. In November 2005, however, there were only 12.5 million registered voters. With 1.8 million *more* Driver's Licenses held by the voting age population than there are registered voters, the argument that the voter ID proposal will be a barrier to voting is a fallacy. Add in another 3,960,249 unexpired Texas Identification Cards in the state as of April, 2006<sup>10</sup> and 87% of the *total* state population (all ages) has some form of government identification card.

[see chart on next page]

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<sup>10</sup> Claire McGuinness, Senior Staff Attorney, Drivers License Division, Texas Department of Public Safety; Submitted Thursday, July 13, 2006; response received Monday, July 17, 2006.

Registered Voters (Nov, 2005) <sup>11</sup>	12,577,545
Age 18+ Driver's Licenses (fy2005) <sup>12</sup>	14,429,377
Texas ID Cards (2006) <sup>13</sup>	3,960,249

Granted, a handful of individuals may not have a government-issued ID. But elections are planned far in advance, giving the statistically few people without an ID plenty of time to obtain one. In Texas, early voting extends 14 days before the actual election date.

To address the concerns of inconveniencing voters, notices can be sent to all registered voters as soon as the Governor signs the voter ID law.

Requiring voters to show a Driver's License or Texas ID Card at the polls can take effect immediately while the citizenship verification is phased in. Almost all Driver's Licenses expire every six years, meaning that seven years after placing citizenship status on the Driver's Licenses, election workers will be able to verify the citizenship of all voters. In short, existing expiration dates for Driver's Licenses need not necessarily be invalidated by the citizenship verification requirement.

Voting is the most important right in America, but it is also a responsibility. The government requires voters to register before receiving a ballot, therefore verifying the information they provide on their registration application is not a measure designed to prevent any *citizen* from voting. It is instead a measure designed to keep illegal aliens, non-citizens and people otherwise not qualified from voting and diluting the legitimate votes cast by citizens.

**Conclusion**

With over 1.6 million illegal immigrants<sup>14</sup> in the state, Texas cannot afford to leave its election system susceptible to their fraudulent votes. Voting is the most paramount right of our representative democracy, and must be reserved strictly for citizens of the United States. Whatever efforts are made to prevent illegal aliens from penetrating our borders, the state should amend its election law and practices so that illegal aliens are prevented from registering to vote or entering the voting booth.

For more in-depth arguments and recommendations, please see Chapter 1 of [State Approaches to Illegal Immigration](#), the final report of the TCCRI Illegal Immigration Task Force. It is available at the above link, and on the homepage of [www.txccri.org](http://www.txccri.org).

<sup>11</sup> Office of the Secretary of State; <http://www.sos.state.tx.us/elections/historical/70-92.shtml>  
<sup>12</sup> Department of Public Safety, Driver's License Division, review of Federal Highway Administration reports  
<sup>13</sup> Department of Public Safety, Driver's License Division  
<sup>14</sup> Federation for American Immigration Reform, "Extended Immigration Data for Texas", 2005 FAIR estimate; [http://www.fairus.org/site/PageServer?pagename=research\\_research2891](http://www.fairus.org/site/PageServer?pagename=research_research2891)