

U.S. CONGRESSWOMAN 

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*Safeguard American Voter Eligibility Act (“SAVE Act”) (H.R. 8281)*

Section-By-Section

**SECTION 1: SHORT TITLE.**

This Act may be cited as the “Safeguard American Voter Eligibility Act” or the “SAVE Act.”

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**SECTION 2: ENSURING ONLY CITIZENS ARE REGISTERED TO VOTE IN ELECTIONS FOR FEDERAL OFFICE.**

Section 2 is the most significant part of the SAVE Act. It would amend the National Voter Registration Act (“NVRA”)—which currently prohibits states from requiring documentary proof of citizenship (“DPOC”) from applicants that register under the NVRA’s registration provisions—to mandate states require Americans to provide DPOC to register to vote in federal elections. These provisions would apply to all new registrants across the United States—including already-registered voters who update their registration as the result of a move, a name change, or a party switch.

*The SAVE Act would bar Americans from registering to vote with their driver’s licenses.*

The SAVE Act’s burdens are extreme—**most Americans would no longer be able to register to vote using their driver’s license or other state-provided identification alone.** Section 2(a) defines the valid forms of DPOC that voter registration applicants must submit under the SAVE Act:

1. a form of photo identification consistent with the REAL ID Act of 2005 that indicates the applicant is a United States citizen—a **bizarre requirement since identification issued pursuant to REAL ID do not list a person’s citizenship status, and indeed REAL IDs are available to noncitizens;**
2. a valid United States passport;
3. a military identification card coupled with a military service record showing the applicant’s place of birth was in the United States—**tracking down and submitting a military service record is likely a significant burden for military voters;**

4. a valid government-issued photo identification card from a federal, state, or Tribal government showing the applicant’s place of birth was in the United States—despite the fact that, **apart from passports, most government-issued forms of identification do not list places of birth, instead merely listing current residence;**
5. a valid form of photo identification issued by a federal, state, or Tribal government (such as a standard driver’s license) that does not comport with (4) above, so long as it is coupled with:
  - a. a certified birth certificate (with several qualifiers), which people who have changed their names—including **tens of millions of married women**—would be unable to use;
  - b. an extract from a United States hospital record of birth showing the applicant’s place of birth in the United States;
  - c. a final adoption decree showing the person’s name and that their place of birth was within the United States;
  - d. a Consular Report of Birth Abroad or a Report of Birth of a United States citizen issued by the Secretary of State;
  - e. a Naturalization Certificate or Certificate of Citizenship issued by the Secretary of Homeland Security; or
  - f. an American Indian Card issued by the Secretary of Homeland Security with the classification “KIC.”<sup>1</sup>

**The SAVE Act would not allow states to accept or process a voter registration application without first receiving the required DPOC.** Sections 2(b)–(e) would amend the NVRA to prohibit states from accepting and processing any application for voter registration in federal elections, including the Federal Mail Voter Registration Application, any state voter registration application, and applications submitted at the Department of Motor Vehicles (“DMV”) or other public assistance agencies if the applicant does not provide the required DPOC along with the application.

*The SAVE Act would gut voter registration by mail and online.*

Section 2(d) of the **SAVE Act would disallow states from accepting the NVRA’s mail voter registration application unless the applicant presents DPOC in person at the office of an appropriate election official.** If a state received an otherwise completed voter registration application without DPOC, the state would be required to notify the applicant that additional DPOC is needed. By requiring people to travel to the office of an election official, this provision of the SAVE Act would essentially gut the utility of the mail voter registration application.

The SAVE Act would also require individuals to bring DPOC to vote if they live in a state with same-day voter registration and intend on both registering to vote and casting a ballot at the same

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<sup>1</sup> The Kickapoo Act of 1983 enabled Mexican-born members of the Kickapoo Tribe of Oklahoma and the Kickapoo Traditional Tribe of Texas to acquire United States citizenship and free passage over the United States-Mexico border through a special naturalization process. The law did not provide for issuance of Certificate of Citizenship to individuals who acquired citizenship through the Kickapoo Act, however, but rather provided for a small, laminated card that included a classification code “KIC.”

time. This would pose a significant burden to many voters, most of whom do not show up to their polling places with their passports or birth certificates.

Section 2(h) would amend the Federal Mail Voter Registration Form to add an internal-use section for election officials to certify the use of DPOC that an applicant has provided.

*The process for those without DPOC.*

Section 2(f) of the SAVE Act would create a process for individuals without DPOC that is so unclear it would likely be unworkable.

The SAVE Act would require the Election Assistance Commission (“EAC”) to provide guidance for states to accept voter registrations from individuals who lack DPOC, but that the process shall include an applicant (1) signing an attestation under penalty of perjury that they are a United States citizen, and (2) submitting “such other evidence to the appropriate State official demonstrating that the applicant is a citizen of the United States.” What this “other evidence” could be—evidence that is not already included in the list of acceptable DPOC under Section 2(a)—is unclear.

Further, upon receiving the signed attestation and the additional, undefined proof of citizenship, the SAVE Act would require election officials to make their own determination as to whether the applicant may properly register to vote—and then sign an affidavit themselves explaining their basis for allowing the applicant to register to vote.

Section 2(g) of the SAVE Act could lead to purges of eligible voters based on faulty sources of citizenship information, including certain state agency databases that may contain unreliable citizenship data.

*State coordination with federal agencies.*

Section 2(f) of SAVE Act would also require the Secretary of Homeland Security, the Commissioner of the Social Security Administration (“SSA”), or any other head of any federal department to provide any state election official with “such information as may be necessary” for the official to verify that a potential voter is in fact a citizen. **The SAVE Act would require the heads of federal agencies to respond to such state requests—which could number in the thousands—within 24 hours.** Given the extremely short turnaround time, this process would undoubtedly be rife with flaws and significantly overburden already-taxed federal agencies.

The SSA has previously explained that sharing this information for voter registration purposes is non-mission work for SSA and would divert critical agency resources needed to administer SSA’s programs. Additionally, SSA is not the authoritative source for U.S. citizenship status—SSA’s citizenship data is a snapshot in time and many people may have changed status (become citizens) and may not have notified SSA.

*A new private right of action.*

Section 2(i) of the SAVE Act would amend the NVRA’s private right of action contained in 52 U.S.C. § 20510(b)(1) to allow for suits against “an election official who registers an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship.” This would undoubtedly result in an avalanche of litigation against election officials in blue states, where the former president has repeatedly alleged noncitizen voting is rampant.

*Severe criminal penalties against election officials.*

Section 2(j) of the SAVE Act would amend the NVRA’s criminal penalties contained in 52 U.S.C. § 20511 to subject any election official who “register[s] an applicant to vote in an election for Federal office who fails to present documentary proof of United States citizenship” to hefty criminal fines and up to five years in federal prison. These criminal penalties would also apply to any executive branch employee who provides “material assistance” to any noncitizen who is attempting to register to vote.

Not only is this a blatant attack on election officials, but the threat of severe criminal penalties would almost certainly make election officials wary to allow applicants who do not have DPOC to make use of the already confusing alternative.

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**SECTION 3: ELECTION ASSISTANCE COMMISSION GUIDANCE.**

Section 3 would require the EAC to adopt guidance—and transmit such guidance to the chief election official in each state—related to the implementation of the extreme DPOC requirements required in Section 2 of the SAVE Act. The EAC would be required to adopt and transmit this guidance within ten days of the enactment of the SAVE Act.

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**SECTION 4: INAPPLICABILITY OF PAPERWORK REDUCTION ACT.**

Section 4 would carve out an exception to the Paperwork Reduction Act of 1980—a law enacted to reduce the burden on private citizens caused by federal paperwork demands—for the onerous requirements that Republicans would impose through the SAVE Act.

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**SECTION 5: DUTY OF SECRETARY OF HOMELAND SECURITY TO NOTIFY ELECTION OFFICIALS OF NATURALIZATION.**

Section 5 would require the Secretary of the Department of Homeland Security to “promptly” notify the relevant state election officials when an individual becomes a naturalized United States citizen, but provides no guidance as to how quickly the Secretary must act to satisfy the bill’s promptness requirements.

Further, receipt of naturalization information by the state election official would do nothing to satisfy the extreme DPOC requirements of Section 2; the SAVE Act requires state officials to demand that an individual (rather than a federal department or agency) provide DPOC. Therefore, even when the Department of Homeland Security directly informs a state of an individual's naturalization, the naturalized citizen would still be barred from registering to vote without following the overbearing DPOC requirements of Section 2.

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#### **SECTION 6: RULE OF CONSTRUCTION REGARDING PROVISIONAL BALLOTS.**

Section 6 clarifies that the SAVE Act would not supersede, restrict, or otherwise affect the ability of an individual to cast a provisional ballot for federal office under existing state law.

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#### **SECTION 7: RULE OF CONSTRUCTION REGARDING EFFECT ON STATE EXEMPTIONS FROM OTHER FEDERAL LAWS.**

Section 7 declares that nothing in the SAVE Act shall be construed to affect the exemption of any state from any federal law other than the NVRA.

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#### **SECTION 8: EFFECTIVE DATE.**

Section 8 establishes that the SAVE Act would become effective upon the enactment of the bill, and that the SAVE Act's requirements shall apply to any voter registration application submitted across the United States on or after that date.