

Voter Identification and Citizenship Requirements: Overview and Issues

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Summary

The Help America Vote Act of 2002 (HAVA, P.L. 107-252) requires that certain voters who had registered by mail present a form of identification from a list specified in the act. States vary greatly in what identification they require voters to present, ranging from nothing beyond the federal requirement to photographic identification for all voters. The adequacy of the current federal requirement has been controversial, and several bills were introduced in the 109th and previous Congresses both to broaden and restrict that requirement. H.R. 4844 (Hyde), which was passed by the House on September 20, 2006, would have required voters to present photo identification with proof of citizenship when voting in federal elections.

Proponents for implementing such additional federal requirements assert that they are necessary to prevent vote fraud, although statistics on the occurrence or impact of such fraud have not been compiled at either the state or federal level. There are, however, reported instances of non-citizens voting in elections regularly. (See, for example, Chris Ramirez, “Prop. 200 Focus of House Hearing,” *Arizona Republic*, August 4, 2006.) Objections to such requirements focus on the problems they might create for some classes of otherwise eligible voters, particularly in the absence of strong evidence linking non-citizen voting to vote fraud, and on the longstanding practice of limiting federal involvement in the administration of elections by states. This report, which will not be updated, presents background information on identification requirements for voting and discusses potential benefits and disadvantages of the provisions in H.R. 4844.

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The identification requirement in HAVA applies only to first-time registrants who register by mail, if the voter has not previously voted in a federal election in the state, or in a local election jurisdiction in cases where the state does not have a computerized, statewide voter registration system.¹ Such voters must present one of the following forms of identification: “a current and valid photo identification [or a copy if voting by mail]; or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” HAVA also requires that mail-in voter registration forms contain a check box for the registrant to certify that he or she is a U.S. citizen. The act does not prevent states from establishing more stringent identification requirements.

Following the passage of HAVA, states enacted laws to implement the HAVA identification requirements, and in some cases, more stringent requirements. Some states have no additional requirements for voters to present a form of identification beyond those in HAVA.² Other states also require voters to present a form of identification from the list in HAVA, or from a more extended list. Still others require all voters to present photo identification. In all cases, voters who cannot present identification are permitted to cast a provisional ballot.

In addition to H.R. 4844 (see below), several bills were introduced in the 109th Congress that took opposite approaches to the question of voter identification. H.Con.Res. 247 (Lewis-GA) and S.Con.Res. 53 (Obama) expressed the sense of Congress that national photo identification requirements for voters should be rejected and that the U.S. Department of Justice should challenge any state law that has, what the resolution refers to as, discriminatory photo-identification requirements. H.R. 533 (Conyers), H.R. 939 (Jones-OH), S. 17 (Dodd), and S. 450 (Clinton) would have modified HAVA to permit use of affidavits to establish identity for first-time voters who registered by mail and would have required the Election Assistance Commission (EAC) to establish standards for verification of identity of voters. H.R. 4989 (Holt) would have required states to provide durable registration cards free of charge to registered voters. The cards could be used to verify identity at the polling place.

In contrast, H.R. 2250 (Green-WI) would have required voters and applicants for voter registration to present government-issued photo identification when appearing in person, or a copy for mailed applications or ballots, but would have provided an exception for persons with disabilities. H.R. 3910 (Feeney) would have required all voters, beginning in 2008, to present state-issued photo identification when voting, and would have established specifications for those identification documents. H.R. 4462 (Gingrey) and H.R. 5913 (Tancredo) would have required voters to provide proof of citizenship when voting or to have such proof on file with the state election office. H.R. 5913 would have further required all voters to present a photo identification card (or copy if voting by mail) issued without charge by the state. S. 414 (McConnell) would have required voters to present government-issued photo identification if voting in person; if voting absentee, a voter with a valid driver’s license would have been required to include the license number. Other absentee voters would have been required to include a copy of a government-issued photo identification, the last 4 digits of the social security number, or the voter-identification number specified in HAVA.

Several bills would have authorized funding for photo identification. S. 414 would have authorized \$25 million for FY2006 and sums necessary thereafter for EAC payments to states to provide free photo identification cards to registered voters who did not already have them. H.R.

¹ See § 303 (b). HAVA also requires that, effective January 2006, all states have such a computerized, statewide voter registration system (see § 303(a)). However, not all states were compliant by that deadline.

² States that do not require voters to present identification may use other means of verification, such as asking voters to state their home address and date of birth, or requiring a signature that would be compared with one on file.

939 and S. 450, which did not require such identification, nevertheless would have authorized \$10 million for FY2006 and sums necessary thereafter to promote the issuance of such cards. H.R. 2250 would have authorized sums necessary for the EAC to make payments to states to reduce costs to low-income persons of obtaining the identification required by the bill. H.R. 4989 would have authorized the funds necessary to assist states in issuing voter registration cards. H.R. 5913 would have authorized funds necessary for the photo identification cards required by the act and would have withheld federal highway funds from states that failed to comply.

On September 14, 2006, the House Administration Committee ordered to be reported H.R. 4844 (Hyde), the Federal Election Integrity Act of 2006, with an amendment in the nature of a substitute. The bill passed the House on September 20, 2006, but was not taken up by the Senate before the October recess. The amended bill would have required proof of citizenship (beginning in 2010) and photo identification issued by the federal government or a state government (beginning in 2008) for voting in federal elections. It would have required that voters who cast a provisional ballot because they did not have the required identification provide such within 48 hours for the ballot to be counted. It included an exception for military overseas voters. The bill would have required states to provide photo identification documents to qualified voters who did not have such documents, and to provide them to indigent voters at no cost. It would have authorized appropriation of such sums as may be necessary to cover the costs of providing such identification to indigent voters.

On October 16, 2006, the Missouri Supreme Court upheld a county court decision that invalidated Missouri's photo ID law. The Supreme Court found that the law violates the equal protection clause in article 1, section 2 of the state constitution, as well as the right to vote under article 1, section 25, "which provides more expansive and concrete protection to the right to vote than the federal constitution."³ On September 14, 2006, Cole County Circuit Judge Richard Callahan had struck down the state law requiring photo identification to vote.⁴ Also on that date, U.S. District Judge Harold Murphy, in Georgia, blocked the state from enforcing its photo ID law, although he did not block its use in the upcoming November election.⁵ Voters in Arizona approved Proposition 200 in November 2004 to require photo identification and proof of citizenship for voting. A 9th U.S. Circuit Court of Appeals ruling that barred its implementation for the November 2006 election⁶ was overturned by the U.S. Supreme Court on October 20, 2006.⁷ In Ohio, a U.S. District Judge issued a temporary restraining order on October 26, 2006, with respect to the state's new voter identification law.⁸ Until the 20th century, not all states required voters to be citizens, and a small number of localities permit non-citizen voting in local elections.⁹

³ The opinion can be found at <http://www.courts.mo.gov/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/aaaf64cbd6899a9e8625721f006356e2?OpenDocument>.

⁴ The opinion can be found at http://www.sos.mo.gov/elections/VotersFirst/Cole_circuit_decision_Voter_ID.pdf.

⁵ Kelly Wiese, "US judge strikes down Missouri voter ID law citing cost of paperwork to get documents," *Associated Press*, Sept. 15, 2006.

⁶ Paul Davenport, "Appellate court blocks enforcement of Arizona voter ID law," *The Arizona Daily Star*, October 5, 2006, available at <http://www.azstarnet.com/sn/hourlyupdate/149785.php>. The text of Proposition 200 may be found at <http://www.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm>.

⁷ The opinion and commentary can be found at <http://moritzlaw.osu.edu/blogs/tokaji/2006/10/supreme-courts-arizona-intervention.html>.

⁸ The restraining order can be found at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/nochordergrantingTRO.pdf>.

⁹ A discussion of the history of non-citizen voting may be found at <http://www.gothamgazette.com/article/feature->

Potential Arguments in Favor

Among the potential arguments in favor of requiring photo identification and proof of citizenship for voting are the following:

- It would establish a uniform, national standard for voting eligibility with respect to photo identification and proof of citizenship, eliminating the potential for confusion from the current state-by-state approach.¹⁰
- It would prevent non-citizens from being able to register to vote unintentionally, thereby preventing any non-citizen from casting a ballot, a right reserved for citizens only.
- It would prevent intentional registration by non-citizens and eliminate that form of vote fraud, either on the part of individuals or on a larger scale.
- It would implement a major recommendation of the National Commission on Federal Election Reform—commonly known as the Carter-Baker Commission—that called for states to require voters to provide photo identification in order to vote.¹¹
- It would bring voting in line with other transactions that require photo identification, such as cashing a check or boarding a plane, or as proof of age or identity for certain types of purchases.

Potential Arguments Against

Among the potential arguments against photo identification and proof of citizenship requirements for voting are the following:

- It is arguably unnecessary, because federal law already prohibits non-citizens from voting in national elections (18 U.S.C. § 611) or from providing false information about citizenship when registering (18 U.S.C. § 911) and carries penalties of a fine, imprisonment for a year, or both.
- H.R. 4844 went well beyond the identification requirement in the Help America Vote Act, which established minimum election administration requirements and specifically noted that “nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title....”¹² With respect to photo identification and citizenship, many states have done exactly that: 24 established stricter identification requirements than HAVA and the remaining states implemented the basic HAVA requirements for identification.¹³
- The bill did not indicate what types of proof of citizenship would be acceptable, so it is hard to determine precisely what its impact would be on voters.

commentary/20030825/202/503.

¹⁰ Nearly half the states already have an identification requirement, and all the states require that a voter must be a citizen.

¹¹ The report can be found at <http://www.american.edu/ia/cfer/>.

¹² § 304.

¹³ A state-by-state summary of identification laws may be found at <http://www.electionline.org/Default.aspx?tabid=364>.

- The bill would have placed an additional burden on potential voters who must provide documentation at the time both of registration and of voting. In the U.S., the burden of registration falls to the individual to begin with, in contrast to other democracies where the government compiles the list of eligible voters and where turnout tends to be considerably higher than in the United States.
- For some voters—particularly the elderly, the poor, and some minorities—obtaining the proper government documentation to prove citizenship could be difficult and time-consuming if the person did not have such documents in hand.
- Requiring proof of citizenship would mean that newly registered voters would have to meet an additional requirement to be eligible to vote compared with those who were already registered, raising the question of different standards for different classes of voters (the newly registered vs. the already registered).
- The registration process would be delayed until a potential voter could obtain the necessary proof of citizenship and photo identification, presumably from different government entities, before registering to vote with a third entity, and could create additional burdens for voters.
- The bill did not require that photo identification cards should be provided, free of charge, to all voters, as recommended by the Carter-Baker Commission and as a number of states have done.

Latest Action

The House Administration Committee ordered to be reported H.R. 4844, with an amendment in the nature of a substitute, on September 14, 2006. The House approved H.R. 4844 on a 228-196 vote on September 20, 2006. On November 13, 2006, the bill was referred to the Senate Committee on Rules and Administration; no further action occurred.

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