

Nos. 08-17094, 09-17115
Oral Argument Scheduled for June 21, 2011

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIA M. GONZALEZ, et al.,

Plaintiffs-Appellants

v.

STATE OF ARIZONA, et al.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

(Proposed) BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
SUPPORTING
APPELLEES ON REHEARING EN BANC AND URGING AFFIRMANCE

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SUMMARY

The federal government under the U.S. Election Assistance Commission fails in their oversight under the authority of Help America Vote Act and National Voter Registration Act to safeguard the several States' voter registration databases from non-citizen and multiple voters. What is even worse than negligence is the federal government's attempt (ref. US DOJ's amicus brief in this appeal) to keep Arizona from proactively eliminating ineligible non-citizens and multiple voters from their voter registration rolls. Also, voter registrations in all states that do not require proper identification are operating on a rebuttable presumption that the voter affiant is who he says he is. To legally have a rebuttable presumption, there must prima facie evidence. A voter registration signed by a non-legally identified individual is NOT evidence and is against U.S. jurisprudence to accept a sworn statement by an un-identified individual on a federal or state voter registration affidavit. Arizona rectifies their past lack of integrity in their elections by now requiring voter identification upon voter registration and in voting. In their amicus brief submitted to this court the USDOJ argues against integrity in Arizona's elections by stating that they cannot ask for any additional information that would properly identify the voter affiant when accepting the National Mail Voter Registration Form.

Under their plenary authority under the U.S. Constitution to run elections (including elections for Federal offices), the state of Arizona and every other state has an obligation to their citizens to eliminate ineligible voters from their voter databases to ensure fair and just elections.

IDENTITY AND INTEREST OF THE AMICUS CURIAE AND THE SOURCE OF ITS AUTHORITY TO FILE THIS BRIEF

Individual and sovereign U.S. citizen, Pamela Barnett, resident of California, retired Army captain, who is an unrepresented pro se plaintiff in an existing civil rights case in federal court that has Causes of Action against CA state agencies and the U.S. Election Assistance Commission (Defendant) for lack of enforcement of California and Federal election/voting laws. The case is Barnett v. Dunn, Brown, Bowen, EAC et al, **Civil Rights CASE: 10-cv-02216-KJM-DAD** in the Eastern District of California.

Barnett filed a judicial notice in this action that specifically addresses the law violations of the U.S. Election Assistance Commission's National Mail Voter Registration Form and illustrates the facts that California and no other state (except until recently when IN, MS, MO and NE started verifying voter applicants through the AAMVA's (American Association of Motor Vehicle Administrators) Verification of Lawful Status which includes citizenship verification (VLS)),

including Arizona, cross-checks their new voter applicant information with government databases to verify citizenship of applicant. (See **Exhibit 6**)

ARGUMENT #1
EAC'S USE OF NATIONAL MAIL VOTER REGISTRATION FORM
VIOLATES FEDERAL HAVA AND NVRA LAWS

An example of gross negligence or even worse, the intentional undermining of one citizen, one vote, is the EAC's use of a voter registration form that violates the law and encourages non-citizen and multiple voting. Under 42 USC 1973gg-4 (a)(1), Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office. If the federal government can thrust a voter registration form upon the several states, then they can ensure policy and standards that enforce federal election law. Congress gave the authority to the EAC to help establish databases of legally qualified voter applicants.

According to the National Voter Registration Act (NVRA) 42 USC 1973gg(3) and HAVA, the measure of compliance by registration is the compelling state interest as if an applicant were also obtaining a driver's license in the domiciliary state, and to which the National Mail Voter Registration Form (NMVRF) (see **Exhibit 1**) fails to require an applicant's place of birth (which is required on CA

and other states' driver's license applications and helps election officials to ascertain information validity including citizenship status in keeping with the preemptory nature of Federal law) and whether the voter registrant has registered before and if so – where? (This helps election officials to eliminate election fraud through duplicate registrations within and between States). 1973gg-3(c)(2)(b)(i) and (ii) state that the several States may prevent duplicate voter registrations and enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process. The federal government under the EAC is interfering with all of those State's rights by forcing them to use a form that does not comply with their State's election laws regarding the application process. The EAC requires acceptance of this form that does not fulfill requirements of NVRA and HAVA, and also conflicts with a state's right to make "stricter" voter registration requirements under HAVA, H.R. 3295-49, SEC. 304.

For example, California Secretary of State Debra Bowen makes available on her CA SOS website the NMVRF to be used by legal residents of California for actual voter registrations in all counties. Voter affiant's state or country of birth information is required information under California Election Code 2150, Subsection 6 and prior voter registration information is required under CEC 2150, Subsection 10 which states - *A prior registration portion indicating whether the*

affiant has been registered at another address, under another name, or as preferring another party. If the affiant has been so registered, he or she shall give an additional statement giving that address, name, or party.

In addition to Arizona, the NMVRF has caused consternation among election officials in the other states. Leading up to the 2010 CA general election, the San Diego County Registrar sent correspondence asking for place of birth information to affiants that submitted the NMVRF for processing. (see **Exhibit 2** County Registrar Letter) This has cost San Diego County an untold amount of money to correct a problem that the EAC has caused. The NMVRF has lead to disenfranchisement of at least San Diego county voters and has even worse opened up the door to non-citizen and multiple voters, and weakened the integrity of the elections for voters of California and Arizona and all of the several States that are forced to use the NMVRF by the federal government.

California Secretary of State's office realizes the NMVRF violates CA election law and states the following in an official memo (see **Exhibit 3**) to California county voter registrars:

Accepting the National Form: Election Officials Do Not Need to Determine Registrant's Country or state of birth (if born in the U.S.) or country of birth (if born outside of the U.S.)

This requirement can be found in two places:

Elections Code section 2150 (a)(6), which states in part:

(a) The affidavit of registration shall show:

(6) The state or country of the affiant's birth.

Elections Code section 2157 which states in part:

(a) Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by Secretary of State. The affidavit shall:

(Contain the information prescribed in Section 2150.

However, the requirement that a person provide this information to register to vote only applies to someone registering to vote using the state voter registration form that is developed pursuant to state law and regulation. State law does not require a person using the National Form to provide any additional information beyond what is contained on the national Form in order to register.

The requirement that state and local elections officials accept the National Form from any person applying to register to vote can be found in the National Voter Registration Act (NVRA) 42 U.S.C. Sec. 1973gg-4 (a) which reads in part:

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission [now the Election Assistance Commission] pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal Office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in

section 1973gg-7(b) of this title for the registration of voters in elections for Federal Office.

So, while (2) permits states to develop their own voter registration forms, (1) requires states to (unless they have been exempted under the NVRA) accept as complete a voter registration application submitted by a person using the National Form.

Arizona and every other state should challenge the legality of the NMVRF because it promotes illegal registrations and voting and is not in keeping with having only “eligible” voters vote under NVRA.

ARGUMENT 2

AFTER SPENDING HUNDREDS OF MILLIONS OF DOLLARS IN TAX PAYER MONEY AND AFTER ALMOST 10 YEARS SINCE HAVA WAS SIGNED INTO LAW, THE EAC FAILED TO ENSURE THAT STATE VOTER REGISTRATION DATA IS CROSS-CHECKED WITH CITIZENSHIP FIELDS OF STATE AND FEDERAL GOVERNMENT DATABASES

As late as 2009 no States checked citizenship data fields when cross checking voter applicant information with government database. Only 4 states now verify citizenship through their database: MS, MO, IN and NE. If the EAC is OK with checking name, date of birth, address, and matching name to social security numbers, why do they fail to ensure citizenship of voter applicants is verified?

After researching the California Secretary of State’s procedures for verifying voter affiant data, Barnett confirmed that neither the Secretary of State’s (SOS) office nor any of the country registrars verify that the voter affiant is a legal U.S.

citizen. Barnett used research from the Brennan Center for Justice, *Making the List: Database Matching and Verification Processes for Voter Registration, (California)* report published in 2006 for a basis of her determination. (see **Exhibit 4 for sections of report**) The Brennan Center for Justice is an amicus curiae for the appellants in this action. They conducted a study of voter registration database implementation under the new requirements of Help America Vote Act. Brennan sent a questionnaire to each state's head election official to record how each state would verify the voter applicant information with state and federal database.

On May 4, 2011, Barnett verified her conclusion that California does not verify citizenship status of their voter affiants with a Secretary of State Office employee Cathy Ingraham Kelley. Kelley confirmed that neither the county registrars nor the secretary of state's office verifies citizenship of voter affiants (applicants). She stated that the SOS relied on the sworn statement of the affiant and treated the issue of citizenship like a "rebuttable presumption." After spending hundreds of millions of federal (USDOJ Source) and California state tax dollars to build voter databases to safeguard the integrity of voter registrations under Help America Vote Act, California under the guidance of EAC officer SOS Debra Bowen and the EAC failed to ensure that the citizenship information on the California Drivers/Identification and/or Social Security records databases was cross-checked

with the state voter databases. According to the California section of the report page CA-2, **the state of California only verifies Identifying Number, first name, last name, and date of birth. California does NOT verify citizenship information or place of birth.**

Directly from report - “What fields from the voter registration form will the state seek to match to motor vehicle or Social Security records?

Identifying number, first name, last name, and date of birth.”

CA SOS Bowen and the other EAC officers ignore valuable citizen verifying information data fields on the department of motor vehicles databases. For example, California DMV does not pointedly ask whether or not they are a citizen, but they ask in Block 3 in the **Driver License Or Identification Card Application** “to complete this section only if you ARE NOT eligible for a Social Security Number. An applicant attesting that they ARE NOT ELIGIBLE would be ruled out as a non-citizen (because all U.S. citizens are entitled to a Social Security Number). However, some non-citizens like Permanent Resident aliens, receive Social Security Numbers and Social Security benefits without ever being a U.S. citizen. On the CA driver’s license application Block 2 asks for “State or Country for the ID number.” This field would also highlight non-citizens. Finally, in the upper right corner of the form in the “For DMV Use Only” box, the DMV

employee writes in an “BD/LP Code”, LP stands for “legal proof”. In this box is also asks for the State/Country of identification Primary Document.

The CA DMV states on its website “The issue of identification reliability, integrity, and confidentiality is of prime concern to all citizens. Eligibility for government services, issuance of various licenses, assessment of taxes, **the right to vote**, etc., are all determined through evaluations based on identification documents. It is critical that identification documents be authenticated and accurate in identifying each individual.”

At the consternation to CA citizen however, the state of California does not require identification to register to voter or to vote except in limited circumstances.

Barnett also verified through the Brennan report Making the List that the only data fields that are checked by the several states are; Identification Number, Name, Address, Date of Birth and AAMVA (a social security number check through American Association of Motor Vehicle Administrators). None of these data fields verify citizenship of the voter affiant, The AAMVA check only verifies that the given name matches the social security number given. It does NOT verify citizenship. (see **Exhibit 5**)

All of the several States (except recently NE, IN, MS, MO) fail to cross check citizenship data fields to eliminate non-citizens from the voter rolls. Non-citizens obtain drivers licenses and social security

numbers so you having these identification numbers does not prove citizenship.

Further, this is another example of the Election Assistance Commission's failure to oversee and safeguard Arizona's and the other states' voter registration databases from fraudulent non-citizen voter registrations.

The EAC could have instituted a program to enable States to verify voter applicant's (affiant's) citizenship from when HAVA was first enacted in 2002 through the E-Verify database system that was started in 1997. (see **Exhibit 7**). The Verification of Legal Status system (see **Exhibit 6**) is also now available to States to validate a voter applicant's citizenship, but the EAC is not requiring its use or any other citizenship verification. The EAC fails to protect citizen suffrage rights by allowing access to voter registration and voting by non-citizens by failing to institute standards of voter applicant citizenship.

**ARGUMENT #3
VOTER APPLICATION AFFIDAVITS SIGNED BY UN-IDENTIFIED
INDIVIDUALS DO NOT MEET THE STANDARD OF REBUTTABLE
PRESUMPTION**

A rebuttable presumption is commonly known as an assumption made by a court or by a legislative body that is taken to be true unless someone comes

forward to contest it and prove otherwise. To have any legal value rebuttable presumptions are supported by prima facie evidence or facts.

In the case of *Johnson v. Watkins*, 70 Nev. 156, 262 P.2d 237 (1953) a truck driver tried to invoke the rule regarding evidentiary inferences in his favor. According the Nevada Supreme Court an evidentiary inference is: a logical and reasonable conclusion of a fact not presented by direct evidence but which, by process of logic and reason, a trier of fact may conclude exists from the established facts. Although an inference may give rise to a rebuttable presumption in appropriate cases, an inference simply allows the trier of fact to determine, based on other evidence, that a fact exists. An inference is permissible, not required, and it does not shift the burden of proof. *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006)

Just this year the Supreme Court upheld Arizona's law which requires employers to use the E-Verify system in the case *Chamber of Commerce v. Whiting*, 563 U.S. ____ (2011). In 1996, the federal government implemented E-Verify, a computerized employment eligibility verification system in which employers could voluntarily participate. To promote use of E-Verify, the federal Illegal Immigration Reform and Immigrant Responsibility Act granted employers that confirmed a worker's eligibility through E-Verify a rebuttable presumption

that the employer had not violated federal law against hiring undocumented workers. This rebuttable presumption could be raised in court as a defense to charges of hiring unauthorized workers in violation of federal law. With E-Verify the potential employee provides ID (evidence) to the employer, unlike registering to vote without any identification.

A sworn affidavit without verifiable proof of the voter affiant's identity is nothing more than a weak inference and far from a rebuttable presumption. In states that do not require identification to register to vote, there is no evidence the affiant is who he says he is, this renders the sworn affidavit meaningless. Could lack of proof as to who signs the voter affidavit be one of the reasons that none of the over 4,000 foreign nationals (Confirmed by INS) was convicted of voter fraud in the election of Loretta Sanchez over Bob Dornan?

Therefore, Arizona 200's identification requirement should be upheld and every other state should enact an identification requirement as well to help ensure fair and legal elections for all U.S. citizens.

CONCLUSION

The District Court ruled correctly in allowing Arizona 200 to stand. The enacting of NVRA by Congress was to increase ELIGIBLE, CITIZEN VOTERS in federal elections. Arizona's Proposition 200 protects the suffrage rights of it citizens by attempting to keep non-citizen foreign nationals off of their voter rolls.

Proposition 200 is in keeping with the NVRA's requirement to have only ELIGIBLE voters vote. HAVA also allows any state to establish more restrictive registration guidelines.

SWORN STATEMENT BY AMICUS CURAIE

Amicus Curiae Barnett affirms that she is over the age of 18 and is of good mental health and swears under the laws of Arizona and the United States that the exhibits contained herein are exact copies of documents or web pages and are without alteration except for size and color, and that any statements made herein are accurate to the best of her knowledge.

Respectfully submitted,

s/ Pamela Barnett

PAMELA BARNETT, Individual Pro Se, w/o Counsel

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief does not exceed the type-volume limitation imposed by Federal Rules of Appellate Procedure 32(a)(7) (B), 29(d) and Ninth Circuit Rule 29-2(c)(3). The brief was prepared using Microsoft Word 2007 and contains 2,980 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

s/ Pamela Barnett
PAMELA BARNETT

RULE 29(A) REQUIREMENT

Amicus Curiae Pamela Barnett, an individual citizen files this brief pro se without counsel. Barnett authored this brief in whole and received \$70 from 2 residents of Arizona to make copies of brief if accepted by court. Kandace Ricotta gave \$50 and Jim Wise gave \$20 to amicus curaie.

s/Pamela Barnett
PAMELA BARNETT

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2011, I electronically filed the foregoing brief with the Clerk of the Court for United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system.

I further certify that on June 15, 2011, I served a copy of the foregoing brief on the following parties or their counsel of record by U.S. First Class Mail:

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EXHIBIT 1

National Mail Voter Registration Form

Application Instructions

Before filling out the body of the form, please answer the questions on the top of the form as to whether you are a United States citizen and whether you will be 18 years old on or before election day. If you answer no to either of these questions, you may not use this form to register to vote. However, state specific instructions may provide additional information on eligibility to register to vote prior to age 18.

Box 1 — Name

Put in this box your full name in this order — Last, First, Middle. Do not use nicknames or initials.

Note: If this application is for a change of name, please tell us in Box A (on the bottom half of the form) your full name before you changed it.

Box 2 — Home Address

Put in this box your home address (legal address). Do not put your mailing address here if it is different from your home address. Do not use a post office box or rural route without a box number. Refer to state-specific instructions for rules regarding use of route numbers.

Note: If you were registered before but this is the first time you are registering from the address in Box 2, please tell us in Box B (on the bottom half of the form) the address where you were registered before. Please give us as much of the address as you can remember.

Also Note: If you live in a rural area but do not have a street address, or if you have no address, please show where you live using the map in Box C (at the bottom of the form).

Box 3 — Mailing Address

If you get your mail at an address that is different from the address in Box 2, put your mailing address in this box.

Note: If you have no address in Box 2, you must write in Box 3 an address where you can be reached by mail.

Box 4 — Date of Birth

Put in this box your date of birth in this order — Month, Day, Year. *Be careful not to use today's date!*

Box 5 — Telephone Number

Most States ask for your telephone number in case there are questions about your application. However, you do not have to fill in this box.

Box 6 — ID Number

Federal law requires that states collect from each registrant an identification number. You must refer to your state's specific instructions for item 6 regarding information on what number is acceptable for your state. If you have neither a drivers license nor a social security number, please indicate this on the form and a number will be assigned to you by your state.

Box 7 — Choice of Party

In some States, you must register with a party if you want to take part in that party's primary election, caucus, or convention. To find out if your State requires this, see item 7 in the instructions under your State.

If you want to register with a party, print in the box the full name of the party of your choice.

If you do not want to register with a party, write "no party" or leave the box blank. Do not write in the word "independent" if you mean "no party," because this might be confused with the name of a political party in your State.

Note: If you do not register with a party, you can still vote in general elections and nonpartisan (nonparty) primary elections.

Box 8 — Race or Ethnic Group

A few States ask for your race or ethnic group, in order to administer the Federal Voting Rights Act. To find out if your State asks for this information, see item 8 in the instructions under your State. If so, put in Box 8 the choice that best describes you from the list below:

American Indian or Alaskan Native
Asian or Pacific Islander
Black, not of Hispanic Origin
Hispanic
Multi-racial
White, not of Hispanic Origin
Other

Box 9 — Signature

Review the information in item 9 in the instructions under your State. Before you sign or make your mark, make sure that:

- (1) You meet your State's requirements, and
- (2) You understand all of Box 9.

Finally, sign your full name or make your mark, and print today's date in this order — Month, Day, Year.

If the applicant is unable to sign, put in Box D the name, address, and telephone number (optional) of the person who helped the applicant.

Voter Registration Application

Before completing this form, review the General, Application, and State specific instructions.

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)		This space for office use only.					
1	(Circle one) Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV		
2	Home Address		Apt. or Lot #	City/Town	State	Zip Code	
3	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code	
4	Date of Birth ____/____/____ Month Day Year	5	Telephone Number (optional)		6 ID Number - (See Item 4 in the instructions for your state)		
7	Choice of Party <small>(see Item 7 in the instructions for your State)</small>	8	Race or Ethnic Group <small>(see Item 8 in the instructions for your State)</small>				
9		I have reviewed my state's instructions and I swear/affirm that: <input type="checkbox"/> I am a United States citizen. <input type="checkbox"/> I meet the eligibility requirements of my state and subscribe to any oath required. <input type="checkbox"/> The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.		Please sign full name (or put mark)			
				Date: _____ Month Day Year			

If you are registering to vote for the first time, please refer to the application instructions for information on submitting copies of valid identification documents with this form.

Please fill out the sections below if they apply to you.

If this application is for a change of name, what was your name before you changed it?

A	Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV
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If you were registered before but this is the first time you are registering from the address in Box 2, what was your address where you were registered before?

B	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
---	----------------------------------	---------------	------------------	-------	----------

If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

C	<input type="checkbox"/> Write in the names of the crossroads (or streets) nearest to where you live. <input type="checkbox"/> Draw an X to show where you live. <input type="checkbox"/> Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.		NORTH
	Example _____ _____ Public School ●	Road to ● Grocery Store Woodchuck Road	_____ _____ X

If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

D	
---	--

Mail this application to the address provided for your State.

EXHIBIT 2
San Diego County Registrar Voter Correspondence

PLEASE REFER TO INSTRUCTIONS ON THIS SHEET AS INDICATED BY NUMBERS IN THIS BOX AND COMPLETE AFFIDAVIT.

MISSING BIRTH PLACE

DEAR VOTER:

This form is being sent to you because your original affidavit of registration was not properly completed. Before we can complete the processing of your Affidavit of Registration, we must have additional information from you. Information required is indicated by the numbers printed in the upper right-hand corner of this form. Please complete the corresponding line numbers on the enclosed affidavit. IF THE MISSING INFORMATION IS ON LINE 5, THIS FORM MUST BE RETURNED TO OUR OFFICE BEFORE YOU WILL BE ALLOWED TO VOTE.

IF:

- Line 1 - Please enter your full and complete name. Married women must use their name and not the name of their husband.
- Line 2 - Your complete residence address must be entered, including City and Zip. This must be your residence address and not a mailing address. Mailing address is entered on Line 4.
- Line 3 - If street address is unknown, please furnish the name of the property owner and/or parcel number.
- Line 4 - We must have a complete mailing address.
- Line 5, 6 - We need your Birth date and/or place of birth.
- Line 9 - You did not indicate any political affiliation. Unless you specify a political affiliation we must list you as "Decline to State" or "Nonpartisan". This will effect your ability to vote for partisan offices at a Primary Election.
- Line 12 - You must sign and date the enclosed affidavit form.

The enclosed affidavit form has been completed with the information we have on file for your convenience. Please complete the blank lines indicated, SIGN and return the card to our office. Return postage has been prepaid.

If you have any questions, please contact us at (858) 694-3447

THANK YOU for your cooperation
County of San Diego Registrar of Voters

EXHIBIT 3
California Secretary of State Acknowledges NMVRF Violates CA Law



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 14th Street, 5th Floor | Sacramento, CA 95834 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

November 3, 2009

County Clerk/Registrar of Voters (CC/ROV) Memorandum #09173

TO: All County Clerks/Registrars of Voters

FROM: 
Cathy Mitchell
Chief of Elections

RE: Voter Registration: Use of National Mail Voter Registration Form

After posting a program on the Secretary of State's website that allows voters to more easily fill out the National Mail Voter Registration Form (National Form), two questions have arisen.

The first is why the National Form, not the state voter registration form, is posted on the Secretary of State's website.

The second is whether county elections officials need to obtain a registrant's U.S. state or foreign country of birth before officially registering to vote anyone who used the National Form to register.

Using The National Form, Not The State Voter Registration Form

Current state law and regulations specify how a state voter registration form must be constructed. Specifically, Elections Code section 2157 requires the state voter registration form to:

- o Be included on one part of a multipart card that is perforated
- o Contain a serial number
- o Use multiple type sizes and colors of ink
- o Have its return postage pre-paid by the Secretary of State

Furthermore, Title 2, California Code of Regulations, section 19056, requires the state voter registration form to be 5" x 8" x .007."

These requirements effectively preclude a state or local elections official from accepting a state voter registration form printed from a website. This is why the Secretary of State does not make the state form available on the Internet and discourages others from making it available on the Internet.

Prior to 2009, the Secretary of State's website did allow a person to fill out a state voter registration form online and have it mailed to them so the person could sign and return it. That program was discontinued for three reasons:

1. It cost approximately \$1.64 per form.
2. Many people did not return the form because they mistakenly believed they had registered to vote online and therefore did not need to sign and return the voter registration form.
3. Many people requested the forms too close to the E-15 registration deadline and could not return them by the deadline.

Accepting the National Form: Elections Officials Do Not Need to Determine Registrant's Country or State of Birth

Under California law, when a person submits a state voter registration form, he or she is required to provide either their state of birth (if born in the U.S.) or country of birth (if born outside of the U.S.).

This requirement can be found in two places:

Elections Code section 2150 (a)(6), which states in part:

- (a) The affidavit of registration shall show:
 - (6) The state or country of the affiant's birth.

Elections Code section 2157, which states in part:

- (a) Subject to this chapter, the affidavit of registration shall be in a form prescribed by regulations adopted by the Secretary of State. The affidavit shall:
 - (1) Contain the information prescribed in Section 2150.

However, the requirement that a person provide this information to register to vote only applies to someone registering to vote using the state voter registration form that is developed pursuant to state law and regulation. State law does not require a person using the National Form to provide any additional information beyond what is contained on the National Form in order to register.

This is clarified in Elections Code 2162, which reads in part:

- (a) No affidavits of registration other than those provided by the Secretary of State to the county elections officials or the national voter registration forms authorized pursuant to the National Voter Registration Act (42 U.S.C. Sec. 1973gg) shall be used for the registration of voters.

The requirement that state and local elections officials accept the National Form from any person applying to register to vote can be found in the National Voter Registration Act (NVRA), 42 U.S.C. Sec. 1973gg-4 (a), which reads in part:

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

So, while (2) permits states to develop their own voter registration forms, (1) requires states to (unless they have been exempted under the NVRA) accept as complete a voter registration application submitted by a person using the National Form.

If you have any questions, please contact me at Cathy.Mitchell@sos.ca.gov or Robbie Anderson at Robbie.Anderson@sos.ca.gov or via telephone at (916) 653-7635.

EXHIBIT 4
Database Matching and Verification Processes for Voter Registration
Excerpts from Brennan Center for Justice “*Making the List*”, 2006

Making the List:

Database Matching and Verification Processes for Voter Registration

by

Justin Levitt, Wendy R. Weiser,
and Ana Muñoz



BRENNAN
CENTER
FOR JUSTICE
AT NYU SCHOOL OF LAW

VOTING RIGHTS &
ELECTIONS SERIES

March 24, 2006

Making the List:

Database Matching and Verification Processes for Voter Registration

This report is the first comprehensive summary of critically important new voter registration procedures effective in most states at the beginning of 2006.

Federal law now requires, as of January 1, 2006, that states create and maintain statewide databases to serve as the central source of voter registration information. Citizens' ability to get on the rolls—and thus their ability to vote and have their votes counted—will now depend on the policies and procedures governing the use of these databases in the voter registration process. Evidence demonstrates that poor policy and procedure choices could result in the unwarranted disenfranchisement of millions of eligible citizens attempting to register to vote. The new statewide databases, and their role in the voter registration process, are poorly understood, but extremely consequential.

This report, issued just as the state databases begin to come online, presents the first comprehensive catalog of the widely varying state database practices governing how (and in some cases, whether) individuals seeking to register will be placed on the voter rolls. The report covers each state's voter registration process, from the application form up through Election Day—including the intake of registration forms, the manner in which information from the forms may be matched to other government lists, the consequences of the match process, and any opportunity to correct errors. Each variation at each step of the process has tangible consequences for voters seeking to register and vote in 2006 and beyond.

Making the List is the result of an extensive national survey of state election officials, supplemented by a review and analysis of the relevant state statutes and regulations. It is the best available summary of current and anticipated state practices employed to place new registrants on the rolls, using the new voter registration databases. In addition to state-by-state summaries, this report includes detailed policy recommendations regarding the registration process, based on the best practices in the states and comparative research from other fields. These recommendations are intended to ensure that computerized voter registration lists are compiled and maintained as accurately as possible, in a manner that minimizes the risk that eligible voters will be unintentionally or unfairly disenfranchised.

This report is intended to serve as a resource for election officials, legislators, citizens, and advocates interested in safeguarding access to the franchise and making effective use of the new statewide databases. We hope that the information in this report will contribute to greater understanding of the policies states are currently contemplating to govern the voter registration process, as well as the best policy options available.

Matching Driver's License Numbers				
	Match Standard	Match Fields	Match Process	Likelihood of error
AK	substantial	ID #, name, DOB	official searches database directly	moderate
AL	did not respond	ID #, name, DOB	did not respond	?
AR	substantial	ID #, last name, DOB	official checks a list of possible matches	moderate
AZ	hybrid	exact ID #, DOB substantial name	system finds matches automatically	high
CA	undecided (will likely use exact)	ID #, name, DOB	undecided (likely: system finds matches automatically)	very high
CO	substantial	ID #, name, DOB	undecided	?
CT	undetermined*	ID #, name, DOB	undetermined*	?
DC	undecided	ID #, name, DOB	undecided	?
DE	hybrid	exact ID # substantial name, DOB, address	official searches database directly	moderate
FL	substantial	name, DOB, gender	official checks a list of possible matches	moderate
GA	no match system	no match system	no match system	n/a
HI	did not respond	did not respond	did not respond	?
IA	hybrid	exact ID #, last name, DOB substantial first name	official checks a list of possible matches	very high
ID	hybrid	exact ID # substantial name, DOB	official checks a list of possible matches	significant
IL	substantial	undecided	undecided	?
IN	undecided (likely: substantial)	ID #, name, DOB	undecided (likely: checks list of possible matches)	moderate
KS	undecided	ID #, name, DOB	undecided	?
KY	no match system	no match system	no match system	n/a
LA	exact	ID #, name (accounting for maiden name), address	system finds matches automatically	very high
MA	undecided (likely: exact)	ID #, last name, first initial, DOB	undecided (likely: system finds matches automatically)	very high
MD	exact	ID #, name, DOB	system finds matches automatically	very high
ME	undecided (likely: exact)	ID #, name, DOB	undecided	?
MI	hybrid	exact ID #, last name, first initial, DOB substantial first name	system finds matches automatically	very high
MN	hybrid	ID # or last name, first initial, DOB	official checks a list of possible matches	significant
MO	undecided (likely: exact)	ID #, last name, DOB	undecided (likely: system finds matches automatically)	very high
MS	undecided (likely: exact)	ID #	undecided (likely: system finds matches automatically)	very high

* Because of litigation in Connecticut pending at the time the survey was conducted, Connecticut materials in this report reflect only the practice codified in state statutes and regulations, and do not reflect the phone survey.

Matching Social Security Digits				
	Match Standard	Match Fields	Match Process	Likelihood of error
AK	substantial	ID #, name, DOB	official searches database directly	low
AL	did not respond	ID #, name, DOB	did not respond	?
AR	undecided (likely: substantial)	undecided (likely: ID #, name, DOB)	undecided (likely: official checks a list of possible matches)	low
AZ	hybrid	exact ID #, DOB substantial name	system finds matches automatically	high
CA	AAMVA	AAMVA	AAMVA	very high
CO	AAMVA	AAMVA	AAMVA	very high
CT	undetermined*	ID #, name, DOB	undetermined*	?
DC	undecided	ID #, name, DOB	undecided	?
DE	hybrid	exact ID # substantial name, DOB, address	official searches database directly	moderate
FL	AAMVA	AAMVA	AAMVA	very high
GA	no match system	no match system	no match system	n/a
HI	did not respond	did not respond	did not respond	?
IA	AAMVA	AAMVA	AAMVA	very high
ID	AAMVA	AAMVA	AAMVA	very high
IL	substantial	undecided	undecided	?
IN	undecided (likely: substantial)	ID #, name, DOB	undecided (likely: checks list of possible matches)	moderate
KS	undecided	ID #, name, DOB	undecided	?
KY	no match system	no match system	no match system	n/a
LA	exact	ID #, name (including maiden name), address	system finds matches automatically	very high
MA	undecided (likely: exact)	ID #, last name, first initial, DOB	undecided (likely: system finds matches automatically)	very high
MD	AAMVA	AAMVA	AAMVA	very high
ME	undecided (likely: exact)	ID #, name, DOB	undecided	?
MI	AAMVA	AAMVA	AAMVA	very high
MN	hybrid	ID # or last name, first initial, DOB	official checks a list of possible matches	significant
MO	AAMVA	AAMVA	AAMVA	very high
MS	undecided (will likely use exact)	ID #	undecided (likely: system finds matches automatically)	very high
MT	AAMVA	AAMVA	AAMVA	very high
NC	AAMVA	AAMVA	AAMVA	very high
ND	no registration	no registration	no registration	n/a
NE	AAMVA	AAMVA	AAMVA	very high

* Because of litigation in Connecticut pending at the time the survey was conducted, Connecticut materials in this report reflect only the practices codified in state statutes and regulations, and do not reflect the phone survey.

Matching Social Security Digits				
	Match Standard	Match Fields	Match Process	Likelihood of error
NH	AAM/A	AAM/A	AAM/A	very high
NJ	AAM/A	AAM/A	AAM/A	very high
NM	undecided	ID #, DOB	undecided	?
NV	did not respond	ID #, name, DOB	did not respond	?
NY	AAM/A	AAM/A	AAM/A	very high
OH	did not respond	ID, name, DOB, or address	did not respond	?
OK	no match system	no match system	no match system	n/a
OR	AAM/A	AAM/A	AAM/A	very high
PA	AAM/A	AAM/A	AAM/A	very high
RI	AAM/A	AAM/A	AAM/A	very high
SC	no match system	no match system	no match system	n/a
SD	AAM/A	AAM/A	AAM/A	very high
TN	hybrid	exact ID#, last name, DOB substantial first name	official checks a list of possible matches	very high
TX	AAM/A	AAM/A	AAM/A	very high
UT	AAM/A	AAM/A	AAM/A	very high
VA	hybrid	exact ID #, DOB substantial name	official checks a list of possible matches	high
VT	AAM/A	AAM/A	AAM/A	very high
WA	AAM/A	AAM/A	AAM/A	very high
WI	hybrid	exact ID # substantial name, DOB	official checks a list of possible matches	significant
WV	AAM/A	AAM/A	AAM/A	very high
WY	AAM/A	AAM/A	AAM/A	very high

No matching

Four states—Georgia, Kentucky, Oklahoma, and South Carolina—do not match or plan to match information from new voter registration forms to the motor vehicles or Social Security databases before placing the registrant on the rolls.

Undetermined

Finally, the match criteria for 8 states¹⁸—for matching records with either driver's license number or SSN digits—could not be determined for this survey. The determination could not be made either because the state in question had not yet decided on its match criteria or because it did not respond to the survey and had no policy reflected in state law.

¹⁸ AL, AR, CT, DC, KS, NM, NV, and OH. Because of litigation in Connecticut pending at the time the survey was conducted, Connecticut materials in this report reflect only the practices codified in state statutes and regulations, and do not reflect a survey response.

EXHIBIT 5
HAVV through AAMVA Does Not Verify Citizenship



**American Association of
Motor Vehicle Administrators**

Serving an International Community of Motor Vehicle and Law Enforcement Officials

Help America Vote Verification (HAVV)

Section 303 of Public Law 107-252 (Help America Vote Act of 2002) requires states and localities to develop centralized, computerized voter databases and to verify voter registration information. Individuals registering to vote must provide their driver's license number to the state election agency. If the registrant has no driver's license, they must supply the last four digits of their Social Security Number (SSN).

The statute requires that the chief state election official and the officials responsible for the state motor vehicle authorities to enter into agreements to match voter registration information with motor vehicle administration (MVA) information. The statute further requires the MVA officials and the Commissioner of Social Security to reach agreements for the purpose of verifying name, date of birth, the last four digits of the SSN, and any information recorded in Social Security Administration's (SSA) records about the death of an individual. The Help America Vote Verification (HAVV) transaction allows a MVA to submit an inquiry to SSA. The SSA verifies the information and responds back to the MVA with the results.

If you are looking for documentation or information related to this application, please contact the helpdesk at helpdesk@aamva.org or call 1-888-226-8280 option 3.

Related Content

- Getting Support
- Fees
- Driver Services
- Application Users
- HAVV Issue Watch



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EXHIBIT 6

AAMVA: Verification of Lawful Status (VLS) Does Verify Citizenship and Made Available to States 1 Year Ago, Only 3 States Using: MO, NE, IN, MS



**American Association of
Motor Vehicle Administrators**

Serving an International Community of Motor Vehicle and Law Enforcement Officials

Verification of Lawful Status (VLS)

Verifying lawful status in an instant and at low cost

Project Update (last updated February 2011)

The releases of VLS are:

- 1.0 – The only user of this release is the state which has already implemented 1.0
- 1.1 – The current release for VLS is 1.1. Any jurisdictions currently developing VLS should use this release. This release supports the Initial and initial resubmit verification transactions.
- 1.2 – An addition to VLS 1.1 is underway, this revision to VLS will be labeled version 1.2. It will add a transaction to reset the password used by the DHS system. The 1.2 documentation is under the Documentation link. Release 1.2 should be ready to use in mid March.
- 2.0 – The additional and third step verification transactions will be supported in release 2.0. Release 2.0 should be ready to use in July.

Motor Vehicle Business Solution

AAMVA's innovative Verification of Lawful Status (VLS) application, like other top-shelf AAMVA technologies, helps state motor vehicle agencies (MVAs) meet the ever growing demand for effective verification systems to combat document fraud activities. Specifically, VLS allows the MVA to verify an applicant's lawful status prior to issuing a state-issued driver's license or ID.

Developed specifically for MVA business systems, this application adheres to the demand for fast and precise driver's license and ID credential transactions. It is integrated into existing MVA front-line support systems by leveraging the robust AAMVAnet infrastructure to provide a seamless interface between the MVA and the Systematic Alien Verification for Entitlements (SAVE) program.

Pilot Participation

USCIS has authorized VLS to move out on the pilot effort and the VLS team is looking to expand the pilot effort to approximately ten (10) jurisdictions. As a reminder, USCIS and the VLS Team are asking each implementing jurisdiction to acknowledge that the current VLS implementation (v1) is a pilot and those participating will agree to implement an 'enhanced' VLS (v2) once it becomes available.

For those jurisdiction's considering participating in the pilot effort, please review the 'Cost' and 'Getting Started' sections below for additional information that may impact the decision process.

Cost

United States Citizenship and Immigration Services (USCIS) charges the MVA directly for using the SAVE program. The USCIS charge is transaction-based and a link to the fee structure can be found on the SAVE Web site.

AAMVA does not impose a charge for using the VLS application.

AAMVA is still negotiating the funding for AAMVA to support the jurisdictional implementation. As a stop-gap, AAMVA offers a 'VLS Jurisdictional Certification

Related Content

SAVE (USCIS)

Documentation

USCIS Fact Sheet for SAVE

users

Evidence of Immigration

Status TPS Beneficiaries

Service' to those jurisdictions that are willing to fund the AAMVA support necessary to carry the jurisdiction through the VLS development, testing, and transition to production lifecycle. The service description and fee is documented in the AAMVA 'Products and Services Catalog'.

DHS has categorized the 'Jurisdictional Certification Service' as an allowable expense for the jurisdiction's Real ID grant monies. For those jurisdictions requiring specific permission from DHS, the VLS team has drafted generic language that the jurisdiction can tailor and submit to Darrell Williams (darrell.williams1@dhs.gov) for direct response. The generic language can be found [here](#).

Getting Started

The VLS v1 application software and documentation are available from AAMVA. An MVA will receive instructions on how to download the AAMVA UNI component upgrade by sending a written request to: unihelpdesk@aamva.org. The VLS application documentation (System Specification and State Procedures Manual) can be downloaded from the [documentation page](#).

AAMVA will provide the training, integration, and testing support needed to transition an MVA from integration to production and verify production status. Until USCIS funding is secured, the VLS team is asking that participating jurisdictions fund this AAMVA certification service. See the 'Cost' section above for more information.

All potential VLS application users are required to register for SAVE through USCIS before deploying the VLS application to a production environment and initiating lawful status queries. Additional information, including a link to begin the registration process, can be found on the [SAVE Web site](#).

Reach out to an AAMVA contact for further information regarding the VLS application and implementation and/or reach out to DHS support for further information regarding the SAVE registration process.

Background

The USCIS operates the SAVE program. The SAVE program is an intergovernmental initiative designed to aid federal, state and local benefit-issuing agencies and licensing bureaus in verifying an applicant's immigration status, thereby allowing the agencies or bureaus to ensure that only eligible applicants receive public benefits. These benefits are to include driver's licenses, permits and identification cards.

The legislation that governs the use of SAVE is:

- Immigration Reform and Control Act of 1986
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- Personal Responsibility and Work Opportunity Act of 1996
- The Real ID Act of 2005

Contacts

Tom Kubala, AAMVA Operations Manager, (703) 908-8269, tkubala@aamva.org
USCIS National Customer Service Center, (888) 464-4218, save.help@dhs.gov

INSIDE THIS SECTION...

| [VLS Documentation](#)

EXHIBIT 7
EVERIFY Verifies Citizenship and Has Been in Use Since 1997



U.S. Citizenship and Immigration Services

Statement for the Record: E-Verify

Introduction

The E-Verify program (formerly known as Basic Pilot) is a Web-based system that electronically verifies the employment eligibility of newly hired employees. This initiative is a partnership between the Department of Homeland Security (DHS) and the Social Security Administration (SSA). U.S. Citizenship and Immigration Services (USCIS), the agency in DHS responsible for immigration services, administers the program.

E-Verify is an essential tool for employers committed to maintaining a legal workforce. Any participating company in the United States can access E-Verify through a user-friendly government Web site that compares employee information taken from the Form I-9 with more than 444 million records in the SSA database, and more than 60 million records in DHS immigration databases. Currently, 99.5 percent of all work-authorized employees queried through E-Verify were verified without receiving a Tentative Non-confirmation (TNC) or having to take any type of corrective action. Those employees whose work authorization cannot be instantly verified are given the opportunity to work with SSA or USCIS, as appropriate, to confirm their work authorization. USCIS estimates one percent of all queried employees choose to contest an initial, tentative result from E-Verify showing that their work authorization could not be verified, and only half of those who contest that result are ultimately found to be authorized. The most recent statistics appear to show that the share of legal workers who are not instantly confirmed by E-Verify as work authorized is decreasing further, but those numbers need more study. Furthermore, on May 5, 2008, E-Verify implemented a series of important enhancements which will continue to improve the accuracy of the system's automatic confirmation processes.

Over 66,000 employers, representing close to 259,000 worksites, currently are signed up to use the E-Verify program, and the number of registered employers is growing by over 1,000 per week. E-Verify is the best available tool for employers to gain quick and easy verification information for their new hires, and we are committed to working with your Committee and other members of Congress to achieve our shared goal of effective employment eligibility verification.

History of the E-Verify Program

Congress established the Basic Pilot, now E-Verify, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 to verify

the employment eligibility of both U.S. citizens and noncitizens at no charge to the employer. The program was first made available on a voluntary basis in 1997 to employers in the five states with the largest immigrant populations: California, Florida, Illinois, New York and Texas. Originally set to expire in 2001, E-Verify has been extended twice, and is due for reauthorization by Congress by November 2008. Since 2004, it has been available free of charge to employers in all 50 states and in the U.S. territories where U.S. immigration laws apply.

Since 2006, the number of employers registered has doubled in size each year; the number of employers has already more than doubled since the beginning of the current fiscal year. There has also been a substantial increase in the number of states that have passed legislation requiring usage of the E-Verify program for some or all employers within the state. Arizona and Mississippi have laws requiring all employers in the state to use E-Verify; and Georgia, Minnesota, Oklahoma, North Carolina, Rhode Island and Utah require some employers to use E-Verify. A recent directive from the U.S. Office of Management and Budget (OMB) required all Federal government agencies to sign up to use E-Verify by October 1, 2007. The Administration has also pledged to commence a rulemaking process to require all Federal contractors and vendors to use E-Verify. In addition, DHS recently published a regulation enabling F-1 Optional Practical Training students to apply for a 17-month extension to their work authorization status if they are employed by an E-Verify registered employer. Participation and usage of E-Verify is expected to grow significantly over the next few years.

Collaboration with SSA

USCIS has enjoyed a close working relationship with SSA over the course of the development, implementation and continuing improvement of the electronic employment eligibility system. USCIS and SSA hold monthly meetings to discuss the program and future initiatives and are committed to working together to continue to improve E-Verify. In October 2007, SSA implemented EV-STAR, a system through which SSA automatically returns the response to a contested mismatch through the E-Verify system once it has been manually checked and resolved at an SSA field office. This is a process improvement developed in partnership with USCIS and SSA. Previously, the onus was on the employees to show a stamped letter to their employers after they visited an SSA office to resolve the discrepancy in the SSA record and for the employer to resubmit the case through the system for final resolution. This former business process could sometimes result in erroneous final non-confirmations when employers queried the system before the government resolved the contested TNC.

Meanwhile, a new case resolution process was implemented on May 5, 2008 to reduce the burden on employees resulting from naturalization-related TNCs based on SSA's records. Such TNCs can occur when an individual has become a naturalized US citizen, but he/she has not yet notified SSA of this change in citizenship status. E-Verify now does an automatic check of DHS naturalization records and, if no DHS record is found, allows employees who receive this type of SSA TNC to call a USCIS toll-free number to correct their record if they prefer not to visit an SSA field

office. Preventing employees from having to travel to an SSA field office also lessens the work for SSA field offices.

In addition, USCIS and SSA are exploring enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information.

How E-Verify Works

SSA Verification

Within three days of hiring an employee, the participating employer is required to enter information from the Form I-9 (Employment Eligibility Verification form), including the employee's name, date of birth, Social Security number (SSN) and citizenship status, into E-Verify and submits a query. Within seconds, the employer receives a response.

The system transmits, in a secure manner, the new hire's SSN, name, and date of birth to SSA to verify that data against the information recorded in its NUMIDENT database. For those employees whose work authorization status can be verified immediately (i.e. whose SSA record matched and confirms U.S. citizenship), the process ends here with a confirmation response returned to the employer through the system within seconds. In the remaining small minority of cases, the system issues a SSA TNC form to the employer. The form is available in English or Spanish.

When a TNC is issued, the employer must notify the employee of the TNC and give the employee the opportunity to contest that finding. If the employee chooses to contest the SSA TNC, he or she has eight business days to visit an SSA office with the required documents to initiate the process to prove identity and support the correction of the SSA record. Until the TNC is resolved, even if it takes longer than eight days, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against him or her because of the TNC. If the employee fails to contact SSA within the eight day contest period, the employee is considered a no show and a final nonconfirmation is issued by E-Verify. At this point, the employer should terminate employment. A recent electronic business process enhancement, EV-STAR, allows SSA to use the E-Verify system to inform the employer of the case resolution once the employee visits SSA and resolves the issue.

For employees who successfully resolve a TNC, correcting SSA records is a useful result of the E-Verify process, helping individuals identify and resolve problems with their Social Security records. The work done to update records to resolve an E-Verify mismatch would need to be done at the time the individual applies for Social Security benefits..

DHS Verification

If the query involves a noncitizen worker, the employee's name, date of birth, and SSN are matched with SSA records as with U.S. citizen cases. If the information matches SSA records, then the DHS identification number and work authorization information are also matched against DHS databases. If the information cannot be verified electronically, the case is forwarded to a USCIS Immigration Status Verifier (ISV), who researches the case and provides an electronic response within one business day, either verifying work authorization or issuing a DHS TNC.

As with the SSA process described above, if the employer receives a TNC, the employer must notify the employee and provide him or her with an opportunity to contest that finding. An employee has eight business days to call a toll-free number (which provides support in ten different languages) to initiate the process to contest the finding. Until the TNC is resolved, the employee must be allowed to keep working and cannot be fired or have any other employment-related action taken against them because of the TNC. Once the necessary information from the employee has been received by phone or fax, the USCIS Immigration Status Verifier resolves the case, typically within three business days, by issuing either a verification of the employee's work authorization status or a DHS final nonconfirmation.

The Current E-Verify System

Under USCIS management and in partnership with SSA, the program is continuously improving its processes to decrease mismatch rates and ensure that E-Verify is fast, is easy to use, and protects employees' rights. Over the past year, E-Verify has automated its registration process, instituted a system change to reduce the incidence of typographical errors, incorporated a photo screening tool to combat more sophisticated forms of document and identity fraud, added Monitoring and Compliance staff to maintain system integrity, added new databases that are automatically checked by the system, and established a new process for employees to call USCIS' toll-free number to address citizenship mismatches as an alternative to visiting SSA, all in an effort to establish efficient and effective verification. If the program becomes mandatory, USCIS is prepared to hire additional staff to handle the increased number of TNCs that would be challenged. SSA would also experience a dramatic increase in field office traffic from employees who are challenging SSA TNCs.

The E-Verify program infrastructure is capable of handling the volume of queries that would be necessary for a nationwide mandatory employment verification system.

DHS and SSA conducted cooperative end-to-end load testing of the Verification Information System (VIS), which is the database that supports E-Verify, in September of 2007. The results of the testing showed that E-Verify has the capacity to handle up to 60 million queries per year. This capacity is in line with the projected 60 million new hire queries per year that would result from mandatory E-Verify legislation applicable to all U.S. employers. DHS will continue to work with SSA to

update the current pilot architecture to ensure that DHS and SSA can provide the most stable environment possible to the employer community and to create an independent environment for E-Verify queries, separate from SSA's other processing needs.

E-Verify is the most accurate and efficient way to verify employment authorization.

E-Verify generates "mismatches" (or TNCs) when the information supplied by the employee or employer does not match the information that either SSA or DHS has on file. In almost every case, a mismatch will occur either because the employee is actually not authorized to work (five percent of all queries based on the September 2007 Westat Evaluation); because the employee has not yet updated his or her records with SSA (for example, to reflect name or citizenship status changes); or because the employer made an error inputting information into the system. Where there is a TNC, E-Verify gives the employee the opportunity to take further action and correct his/her record with the appropriate agency if they believe the mismatch is an error. Once a record is corrected, it remains corrected; that employee will likely not face another TNC if he or she takes a different job with another employer unless the employee has a subsequent change in the information in his or her record. As noted above, correcting these records is important for individuals to receive credit for their full work history when they file for Social Security benefits. Moreover, correcting these records dramatically reduces the chances that they or their employers will receive no-match letters from the SSA in the future pointing out a discrepancy between the employees' personal information and the social security number reported for them.

The opportunity to contest an E-Verify finding is an important step that seeks to ensure that no employee who is in fact work authorized is prevented from working. All employers are required to ensure that employees who receive a TNC are given the opportunity to contest that finding and correct their records. Legal workers who contest will be found employment authorized after resolution of the initial mismatch and suffer no permanent adverse consequences.

Recent studies show that E-Verify is an accurate and effective tool for verifying the work authorization status of employees. For the past few years, E-Verify has been independently evaluated by Westat, a social science research firm, which has monitored the effect of various changes made to the E-Verify system. Currently, 99.5 percent of all work-authorized employees queried through E-Verify were verified without receiving a TNC or having to take any type of corrective action. Though the 0.5 percent of all work-authorized employees who receive TNC is very small, our goal is to reduce it even further. Overall, the Westat evaluation found that over 94 percent of all cases are instantly found to be employment authorized.

A large portion of the small number of employees who successfully contests an SSA TNC are employees who have recently naturalized. Previously, the fact that new citizens had not updated their SSA records would result in a mismatch between the information they submitted on the Form I-9 and the outdated information in SSA's records. As of May 5, 2008, many of these mismatches will no longer occur, as the system now automatically checks USCIS naturalization records before issuing a citizenship status mismatch.

E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival information for non-citizens to its databases as of May 5, 2008, which will eliminate current E-Verify mismatches that have resulted from noncitizen arrival information not yet entered into the databases E-Verify had previously verified against. The addition of this data to the E-Verify system is expected to reduce the number of mismatches that occur for newly arriving workers who have entered the country legally and sought work immediately after they had entered the country.

Lastly, E-Verify plans to incorporate U.S. passport information into the employment verification process as early as this fall. The use of U.S. passport information will help instantly verify those employees born abroad to U.S. citizen parents and U.S. citizens who derived citizenship as children when their parents naturalized, both populations which currently receive a disproportionate numbers of TNC. We are grateful for the hard work of the Department of State in working towards this important data sharing initiative.

These improvements all seek to ensure that the data relied upon by E-Verify is as up-to-date as humanly possible. In some cases, however, the only way for a person's records to be kept accurate is for that person to report name changes and the like to SSA. Because not everyone in the U.S. workforce is unfailingly diligent in this area, there will likely always be a small number of legal workers who will have to go through the TNC process. As a result, no automatic verification system will be perfect. But we continue to work on the system to ensure that every error that can be prevented through government data processes will be avoided.

USCIS's partnership with SSA is essential to the success of E-Verify.

USCIS and SSA have worked closely over the years to improve the E-Verify process, and discussions continue as additional improvements are implemented. USCIS reimburses SSA for all costs incurred for verifications through E-Verify, and has worked hard to decrease E-Verify related work undertaken by SSA field offices. Each year since inception, except for fiscal year (FY) 2006, SSA and USCIS (and legacy INS before then) have signed agreements to reimburse SSA for E-Verify costs. The agencies are still negotiating the reimbursable agreement for FY 2008. Improvements include automating parts of the secondary verification process, and as described above, including the new EV-STAR process for SSA to communicate results to the system) and instituting an enhancement that allows employees to contact USCIS directly to resolve naturalization-related mismatches, thus decreasing the workload in SSA field offices. Lastly, USCIS and SSA are exploring future enhancements to include a data sharing initiative that would update SSA records with naturalized citizenship information.

E-Verify is an efficient and easy system for employers to use.

Participating employers are largely satisfied with the E-Verify program. Last year, the Westat evaluation reported that "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent did not believe that it overburdened their staffs.

The E-Verify program has substantially increased its customer service and program staff over the past two years in an effort to work with employers and ensure that every question or difficulty that arises is addressed. The E-Verify program outreach staff has conducted numerous training programs and workshops across the country to inform employers about the system and the benefits of using E-Verify to verify the work-authorization of their employees.

E-Verify program staff is working to maintain the integrity of the system and effectively prevent discrimination and misuse.

An effective electronic work authorization verification program is critical to reducing the jobs magnet that encourages illegal immigration, but the program also must include robust tools to detect and deter employer and employee fraud and misuse. The E-Verify program has created a Monitoring and Compliance unit that can detect and deter improper use of the system. The Monitoring and Compliance unit also works to safeguard personal privacy information; prevent the fraudulent use of counterfeit documents; and refer instances of fraud, discrimination, and illegal or unauthorized use of the system to enforcement authorities. Once fully staffed, the E-Verify's Monitoring and Compliance unit will carry out its mission by educating employers on compliance procedures and guidelines and providing assistance through compliance assistance calls. The unit will also conduct follow-up with desk audits and/or site visits to unresponsive employers if necessary, and refer cases of fraud, discrimination and illegal use to the Department of Justice Office of Special Counsel (OSC) or U.S. Immigration and Customs Enforcement (ICE), as appropriate.

E-Verify prevents certain types of identity and document fraud.

We are aware that some aliens without work-authorization use identity fraud to obtain employment in this country. To help prevent this problem, the E-Verify program introduced a photo screening capability, which is still under development, into the verification process last September. The photo tool allows employers to identify instances where an employee has tried to use a photo-substituted document, and it has already identified cases of suspected document and identity fraud, thereby preventing unauthorized workers from illegally obtaining employment. The tool allows a participating employer to check the photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green card) against images stored in USCIS databases. The goal of the photo tool is to help employers determine whether the document presented reasonably relates to the individual and contains a valid photo. All employers registered to use E-Verify, with the exception of those who use designated agents or a web services application, are now using the photo screening process when the worker presents one of the documents currently available in the photo tool database. USCIS is currently working to change the business processes for designated agents and web services users of E-Verify to enable them to use this photo screening capability, and we anticipate that this project will be completed in the next six months.

We are also working to expand the types of documents for which the E-Verify system will allow photo confirmation. The strength of this tool is directly dependent on the range of documents for which it can be used, and our long-term goal is for the

E-Verify photo screening process be able to verify the photos on all identity documents that an employee may present as acceptable Form I-9 documentation.

USCIS is aware of the prevalence of identity fraud in this country, and is especially concerned with how this practice affects E-Verify. While we do not currently have any way to identify, upon initial verification, identity fraud by an employee who has stolen a valid SSN and identity information or has been supplied the information by their employer, we are examining ways to do so. What we are able to do with our Monitoring & Compliance unit is to identify indications that SSN fraud has taken place, and work with ICE, in cooperation with SSA, to deal with these cases. USCIS and ICE are currently finalizing a memorandum of understanding to identify instances where data sharing would be appropriate and we are currently identifying ways to assist each others' work.

Conclusion – The Future of E-Verify

DHS will continue to work with SSA to operate and enhance the E-Verify program. Thank you for the opportunity to submit this statement for the record and we appreciate this subcommittee's continued support of the E-Verify program as it goes through the reauthorization process in the fall.

Last updated:05/20/2008

[Plug-ins](#)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 08-17094, 08-17115

MARIA M. GONZALEZ, et al.,

Plaintiffs-Appellants

v.

STATE OF ARIZONA, et al.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING
APPELLEES ON REHEARING EN BANC AND URGING AFFIRMATION

AMENDED TO CORRECT SUBMISSION DATE
MOTION FOR LEAVE TO FILE PROPOSED AMICUS BRIEF and
MOTION TO EXTEND TIME TO PROVIDE AMICUS BRIEF TO COURT

Pamela Barnett, Pro Se, w/o Counsel Movant

Individual and sovereign U.S. citizen, Pamela Barnett, resident of California,
and unrepresented pro-se plaintiff in the action Barnett v. Dunn, Brown, Bowen,
Election Assistance Commission et al, **Civil Rights CASE:**

10-cv-02216-KJM-DAD in the Eastern District of California, has direct and

tangible interest in this appeals hearing. Movant Barnett filed a judicial notice in this case that specifically addresses how the U.S. Election Assistance Commission's National Mail Voter Registration Form (NMVRF) violates Help America Vote Act (HAVA) and National Voter Registration Act (NVRA) aka motor voter laws, and the Election Assistance Commission's (EAC) failure to safeguard voter registration databases of the several states from non-citizen and multiple voters. The EAC is violating NVRA and HAVA laws by using this form and demanding states use this form. In Movant Barnett's judicial notice filed May 24, 2011, the following sections address how the NMVRF breaks existing federal and state laws: **CA and EAC USE VOTER REGISTRATION FORM THAT BREAKS NVRA AND HAVA LAWS BY NOT ASKING VOTER AFFIANT FOR PLACE OF BIRTH OR IF AFFIANT IS CURRENTLY REGISTERED TO VOTE and SOS BOWEN ADMITS IN MEMORANDUM #09173 THAT THE NATIONAL MAIL VOTER REGISTRATION FORM BREAKS CALIFORNIA LAW, BUT FAILS TO ADDRESS THAT IT ALSO BREAKS FEDERAL LAW UNDER THE NVRA.**

Movant also has crucial factual information regarding the fact that **no** state that maintains a voter registration database cross-checks government database (such as state motor vehicle departments and the Social Security Administration) data fields for citizenship when a new voter is entered into the voter registration database.

Evidence that supports this is given in Movant Barnett's same judicial notice in the section **SOS ADMITS AGAINST INTEREST THAT THEY AND THE COUNTY REGISTRARS DO NOT VERIFY THAT VOTER AFFIANTS (APPLICANTS) ARE LEGAL CITIZENS.** The States and the EAC's have failed to use its allocated hundreds of millions of tax payer dollars to ensure that a voter affiant is eligible under federal law. Movant Barnett believes these facts have not yet been considered by this honorable court or the lower courts. These facts should weigh heavily on the court's decision to allow Arizona 200 and other laws like it to remain in force, because the "affidavit" on the voter registration forms has proven to be an abject failure in discouraging non-citizens from registering to vote as the Honorable Bob Dornan experienced first-hand with his election loss to over 4,000 non-citizen, foreign national voters in 1996. Movant has not been able to find that any of the non-citizens that fraudulently voted in this election were prosecuted.

Movant Barnett is disenfranchised as an eligible U.S. citizen voter when non-citizens are not prevented from voting in U.S. elections. It further pains Movant Barnett that these fraudulent non-citizen voters are seldom prosecuted and rarely experience any jail time. Non-legal voters effectively take a citizen's right to vote by diluting the strength of his vote. As of the writing of this brief, it is only U.S. citizens, not foreigners that can legally vote in our elections.

Unfortunately Movant Barnett was only made aware of this en banc appeal hearing June 12, 2011. Barnett respectfully requests that the honorable court allow Movant's proposed amicus brief to be filed in support of the Appellee as it contains critical information not yet considered by the court to the best of Movant's knowledge. Movant also requests court to extend time to file brief with court to June 15, 2011. Because of the late nature of this action, Movant Barnett has not attempted to officially notify or ask permission to file her proposed amicus brief. Movant will electronically file proposed amicus brief June 15, 2011 and Movant will supply the court 25 copies of the brief the day after court approves her motion to file.

In summary, Movant Barnett's proposed amicus brief provides proof of the federal government's (EAC) failure to safeguard state voter registration databases; this proof therefore necessitates the need of Arizona and all other states that maintain a database to require voter ID and proof of citizenship upon voter registration to eliminate new ineligible voters from the databases. Movant also illustrates in proposed brief how the EAC violates federal election law and encourages fraudulent voting with its use of the National Mail Voter Registration Form.

The District Court ruled correctly in allowing Arizona 200 to stand. The enacting of NVRA and HAVA by Congress was to increase **ELIGIBLE, CITIZEN** VOTERS in federal elections, not just anyone in the U.S. that wants to vote.

Proposition 200 is in keeping of Arizona's attempt to keep ineligible voters off of their voter rolls. Arizona also has the right under HAVA to establish more restrictive voter registration guidelines. Arizona's Proposition is in keeping with protecting a U.S. citizen's right to vote guaranteed under the U.S. Constitution and is in keeping with the mandates under NVRA and HAVA.

s/Pamela Barnett

Pamela Barnett, Pro Se w/o Counsel Movant

CERTIFICATE OF SERVICE

I hereby certify that on June 13, 2011, I electronically filed the foregoing brief with the Clerk of the Court for United States Court of Appeals for the Ninth Circuit by using the Appellate CM/ECF system.

I further certify that on June 13, 2011, I served a copy of the foregoing brief on the following parties or their counsel of record by U.S. First Class Mail:

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