Noncitizen Voter Registration & Voting in Virginia

Progress and Problems
Over the Last Decade

September 10, 2024

Evidence to Support our Claims and Concerns

Since 2021, our efforts have amassed significant documentation through public records requests (FOIAs) with DMV and ELECT which expose and detail DMV's and ELECT's noncompliance and failures to act over the last decade. This documentation includes:

- **Virginia Code, State Electoral Board Meeting Minutes/Video, ELECT Guidance Documents**

- **Responsive documents obtained through FOIAs with DMV and ELECT**

- **Direct written communication with DMV and ELECT**

- **2010 MOA Between DMV and DHS USCIS for use of SAVE Program**

- **2014 MOA Between ELECT and DHS USCIS for use of SAVE Program**

- **2014 and 2021 MOUs Between ELECT and DMV**

- **Annual List Maintenance Reports Prepared by ELECT**

- **2008 and 2018 JLARC Reports**

- **2012 Virginia State Plan on HAVA Compliance**

- **Information Exchange Agreement Between AAMVA and SSA**

- **Data Provided by the Electoral Process Education Corp. (EPEC)**

Key Terminology

ELECT: Virginia Department of Elections

General Registrars (GRs): Persons in each of VA's 133 localities overseeing the local Office of Elections and responsible for voter registration and list maintenance.

Noncitizens: Includes both noncitizens who are **legally-present** (LP) and in the US **illegally**.

Legally-Present Noncitizen: Noncitizens who have been issued a document of legal presence by the Dept. of Homeland Security (DHS) or US Court to temporarily reside in the US.

Illegal Alien: Persons in the US who have entered the US illegally and have no documentation issued by DHS or court to legally reside in the US.

Self-Declared: Attesting not to be a U.S. citizen under penalty of felony as allowed by VA law.

SAVE: The Systematic Alien Verification for Entitlements Program operated by the DHS-USCIS (Dept. of Homeland Security, U.S. Citizenship and Immigration Services)

Limited Duration Driver' License (LDDL): Driver's license issued to legally-present noncitizens; expiration date matches the expiration of the legal-presence documents. (*Definition for purposes of presentation)

Driver Privilege Card (DPC): Driving credential issued to illegal aliens; expiration date is second birthday following the date of issuance.

NVRA: National Voter Registration Act of 1993. Also known as the "Motor-Voter" Law

HAVA: Help America Vote Act of 2002

VERIS: Virginia Elections and Registration Information System – VA's Current Voter Registration System/Voter Database

SVRS: State Voter Registration System – VA's New Voter Registration System and Database scheduled for Feb. 2025

Virginia Constitution & Code

Article II, Section 1. of the ==**VA Constitution**== clearly states that **only US citizens are allowed to vote in VA elections**:

> *In elections by the people, the qualifications of voters shall be as follows: Each voter shall be a citizen of the United States, shall be eighteen years of age, shall fulfill the residence requirements set forth in this section, and shall be registered to vote pursuant to this article. …*

Article II, Section 1. https://law.lis.virginia.gov/constitution/article2/section1/

Additionally, according to ==**VA Code § 24.2-1004**==, the **act of knowingly casting a ballot by someone who is not eligible** to vote is a **Class 6 felony**.

> *A. Any person who wrongfully deposits a ballot in the ballot container or casts a vote on any voting equipment, is guilty of a Class 1 misdemeanor.*

> *B. Any person who intentionally (i) votes more than once in the same election, whether those votes are cast in Virginia or in Virginia and any other state or territory of the United States, (ii) procures, assists, or induces another to vote more than once in the same election, whether those votes are cast in Virginia or in Virginia and any other state or territory of the United States, (iii) votes knowing that he is not qualified to vote where and when the vote is to be given, or (iv) procures, assists, or induces another to vote knowing that such person is not qualified to vote where and when the vote is to be given is guilty of a Class 6 felony.*

https://law.lis.virginia.gov/vacode/title24.2/chapter10/section24.2-1004/

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Voter Registration: The Roles of the Motor Vehicle Administration (MVA/DMV) and the Social Security Administration (SSA)

NVRA: The **National Voter Registration Act (NVRA) of 1993** (known as the **"Motor-Voter" Law**) enabled state motor vehicle agencies (DMVs) to register voters. Under NVRA, anyone seeking a driver's license/ID (or renewal) or a car registration can register to vote or update their voter registration information at a Motor Vehicle Administration (MVA) office (aka DMV in Virginia).

HAVA: The **Help America Vote Act (HAVA) of 2002** enabled the Social Security Administration (SSA) to provide name verifications using full or partial Social Security Numbers (SSNs) on a state's voter registration form when a voter did not have a state-issued ID.

Some states (*like Virginia*) ask a new voter for a <u>full SSN</u>, but 43 states only ask for the last four digits of the SSN. <u>For the 5 states that use the full SSN (including VA)</u>, SSN verification is optional under HAVA.

However, in <u>all states</u>, voter <u>registration</u> is still <u>allowed</u> ***without*** either a **driver's license** or a **full or partial SSN**! [See "box 6" instructions on the National Mail Voter Registration Form that all states must accept: *"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."*]

52 USC 21083 § 21083(a)(5)(D) Section 303 of HAVA (Exemption) – Nothing prohibits VA from verifying SSNs.

52 USC 21083: Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes-

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) [1] of title 42 (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.   6

What We Know About Noncitizen Voter Registration and Voting in VA

Clear evidence indicates:

1. Noncitizens have continuously and consistently been registered to vote in Virginia for at least the last 15 years,

2. Noncitizens have voted in past elections in Virginia,

3. Noncitizens likely remain on Virginia's RVL,

4. Noncitizens are still able to register to vote in Virginia, and

5. DMV system errors in the past have identified citizens as noncitizens and vice versa.

2011 – Fairfax County

Fairfax County alone discovered **278** registered, purported **noncitizens** on their voters rolls in **2011**.

These individuals were identified as noncitizens per <u>self-declaration</u> of noncitizen status at the DMV.

Of those 278 identified, **117** *had previously voted* in state and federal elections.

Annual Noncitizen Removals from VA's Voter Rolls Over the Last Decade

(per ELECT's Annual List Maintenance Reports)

Up until mid-2023 (and possibly June 2024), all noncitizen removals resulted ONLY from self-declarations of non-citizenship.

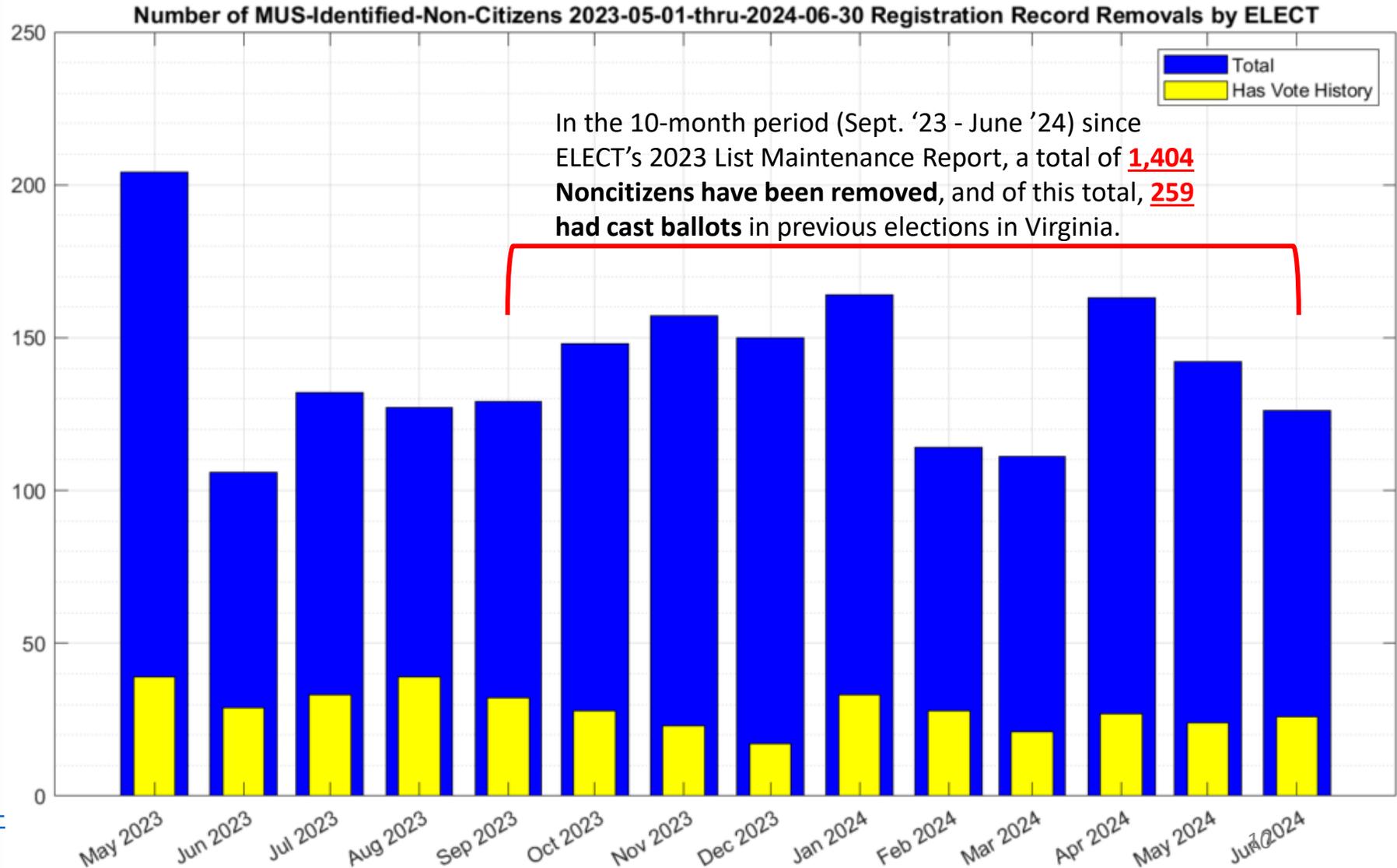| ELECT Report Sep – Aug	Non-citizen cancellations	Significant events
2013 - 2014	434	ELECT institutes online voter registration (Citizen Portal).
2014 - 2015	693	
2015 - 2016	404	DMV implements Electronic Voter Registration at their Customer Svc. Centers
2016 - 2017	1,686	The 2017 spike in removals resulted from **malfunctions of DMV's electronic voter registration system** after its integration into VA's Voter Electronic Registration Information System (VERIS). ELECT gave URL to 3rd Parties.
2017 - 2018	566	
2018 - 2019	524	
2019 - 2020	802	DMV internal processes caused US citizens to be added to noncitizen list.
2020 - 2021	1,302	The spikes in 2021-2023 corresponded with VA's **switch from "Opt-In" to an "Opt-Out"** DMV voter registration process in 2020 and VA's issuance of Driver Privilege Cards (DPCs)/Identity Privilege Cards (IPCs) to illegal aliens in 2021.
2021 - 2022	2,771	
2022 - 2023	2,219	
TOTAL REMOVALS	**11,401**	**Per ELECT's Annual List Maintenance Reports (from 2013 to 2023), 11,401 purported noncitizens have been removed over the last decade with over 6,292 removed in just the last 3 years.**

Since Aug. 2023, over 1,500 additional purported noncitizens have been removed bringing the total to 13,000+.

Noncitizen Removals Since May of 2023 (14-month period)

In the last 14 months, (since May 2023), ELECT has removed **1,973** Noncitizens, and of this total, **399** **have cast** a total of **938** **ballots** in previous elections in Virginia (since Feb. 2019)

Month/Yr	# of Non-citizens Removed	# Removed Who Had Cast Ballots
May '23	204	39 (19%)
Jun '23	106	29 (27%)
Jul '23	132	33 (25%)
Aug '23	127	39 (31%)
Sep '23	129	32 (25%)
Oct '23	148	28 (19%)
Nov '23	157	23 (15%)
Dec '23	150	17 (11%)
Jan '24	164	33 (20%)
Feb '24	114	28 (25%)
Mar '24	111	21 (19%)
Apr '24	163	27 (17%)
May '24	142	24 (17%)
Jun '24	126	26 (21%)
Totals	1,973	399 (20%)

(Sep '23 – Jun '24 bracketed as "Last 10 Months")

ELECTORAL PROCESS EDUCATION CORP.
EPEC DATA FOR VOTERS

https://digitalpollwatchers.org/non-citizen-registrations-with-previous-voting-history-in-va-election-data-update-july-2024/

Number of MUS-Identified-Non-Citizens 2023-05-01-thru-2024-06-30 Registration Record Removals by ELECT

Legend: Total (blue), Has Vote History (yellow)

In the 10-month period (Sept. '23 - June '24) since ELECT's 2023 List Maintenance Report, a total of **1,404** **Noncitizens have been removed**, and of this total, **259** **had cast ballots** in previous elections in Virginia.

Of the 1,973 identified noncitizens on VA's Voter Rolls since May 2023, 399 self-declared noncitizens had cast a total of 938 ballots since 2019

Virginia Localtiy	Noncitizen Voters	Total # of Ballots
FAIRFAX COUNTY	73	162
PRINCE WILLIAM COUNTY	39	92
LOUDOUN COUNTY	38	86
ALEXANDRIA CITY	19	34
CHESTERFIELD COUNTY	19	41
RICHMOND CITY	19	58
NEWPORT NEWS CITY	18	44
CHESAPEAKE CITY	15	32
VIRGINIA BEACH CITY	14	38
ARLINGTON COUNTY	13	38
NORFOLK CITY	11	28
SUFFOLK CITY	11	21
PORTSMOUTH CITY	10	34
HAMPTON CITY	9	15
YORK COUNTY	9	35
STAFFORD COUNTY	6	20
JAMES CITY COUNTY	4	11
ROCKINGHAM COUNTY	4	9
ALBEMARLE COUNTY	3	4
CLARKE COUNTY	3	4
FAIRFAX CITY	3	9
HENRICO COUNTY	3	8
MANASSAS CITY	3	9
MECKLENBURG COUNTY	3	10
PETERSBURG CITY	3	5

Virginia Localtiy	Noncitizen Voters	Total # of Ballots
ROANOKE CITY	3	5
BEDFORD COUNTY	2	3
CARROLL COUNTY	2	5
CHARLOTTESVILLE CITY	2	7
DANVILLE CITY	2	8
HARRISONBURG CITY	2	3
LYNCHBURG CITY	2	2
PRINCE EDWARD COUNTY	2	3
SPOTSYLVANIA COUNTY	2	5
WARREN COUNTY	2	5
WASHINGTON COUNTY	2	6
AMELIA COUNTY	1	3
AUGUSTA COUNTY	1	1
BRUNSWICK COUNTY	1	2
CAROLINE COUNTY	1	0
COLONIAL HEIGHTS CITY	1	3
DINWIDDIE COUNTY	1	1
FAUQUIER COUNTY	1	2
FRANKLIN COUNTY	1	1
FREDERICK COUNTY	1	1
FREDERICKSBURG CITY	1	1
GLOUCESTER COUNTY	1	1
GREENE COUNTY	1	2
MARTINSVILLE CITY	1	0
NEW KENT COUNTY	1	0

Virginia Localtiy	Noncitizen Voters	Total # of Ballots
NORTHUMBERLAND COUNTY	1	4
ORANGE COUNTY	1	3
PITTSYLVANIA COUNTY	1	1
PRINCE GEORGE COUNTY	1	1
PULASKI COUNTY	1	2
RUSSELL COUNTY	1	1
SHENANDOAH COUNTY	1	1
SUSSEX COUNTY	1	3
TAZEWELL COUNTY	1	1
WINCHESTER CITY	1	1
HENRY COUNTY	0	2
POWHATAN COUNTY	0	1
Grand Total	**399**	**938**

ELECTORAL PROCESS EDUCATION CORP.
EPEC DATA FOR VOTERS

https://digitalpollwatchers.org/non-citizen-registrations-with-previous-voting-history-in-va-election-data-update-july-2024/

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VA Noncitizen Registrants, Voters, and Number of Ballots Cast (by Locality) <u>Over Last 14 Months</u>

<u>1973</u> Purported Noncitizen Registrants

<u>399</u> Noncitizens w/ Previous Vote History

<u>938</u> Total Ballots Cast in Previous Elections (since 2019)

ELECTORAL PROCESS EDUCATION CORP.
EPEC DATA FOR VOTERS

https://digitalpollwatchers.org/non-citizen-registrations-with-previous-voting-history-in-va-election-data-update-july-2024/

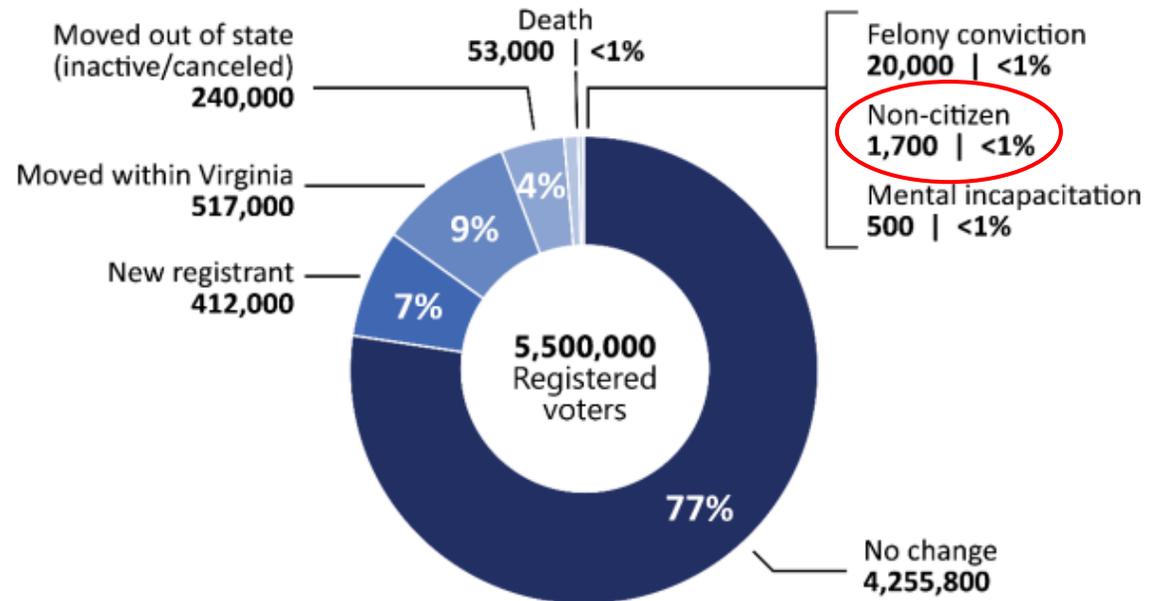| Virginia Localtiy	Noncitizen Registrants	Noncitizen Voters	# of Ballots
ACCOMACK COUNTY	1	0	0
ALBEMARLE COUNTY	19	3	4
ALEXANDRIA CITY	96	19	34
AMELIA COUNTY	2	1	3
APPOMATTOX COUNTY	1	0	0
ARLINGTON COUNTY	57	13	38
AUGUSTA COUNTY	5	1	1
BEDFORD COUNTY	9	2	3
BOTETOURT COUNTY	1	0	0
BRUNSWICK COUNTY	1	1	2
BUCKINGHAM COUNTY	2	0	0
CAROLINE COUNTY	5	1	0
CARROLL COUNTY	6	2	5
CHARLES CITY COUNTY	1	0	0
CHARLOTTESVILLE CITY	15	2	7
CHESAPEAKE CITY	52	15	32
CHESTERFIELD COUNTY	130	19	41
CLARKE COUNTY	6	3	4
COLONIAL HEIGHTS CITY	4	1	3
CULPEPER COUNTY	12	0	0
DANVILLE CITY	13	2	8
DINWIDDIE COUNTY	7	1	1
EMPORIA CITY	2	0	0
FAIRFAX CITY	6	3	9
FAIRFAX COUNTY	355	73	162
FAUQUIER COUNTY	11	1	2
FRANKLIN COUNTY	2	1	1
FREDERICK COUNTY	16	1	1
FREDERICKSBURG CITY	13	1	1
GALAX CITY	1	0	0

Virginia Localtiy	Noncitizen Registrants	Noncitizen Voters	# of Ballots
GILES COUNTY	2	0	0
GLOUCESTER COUNTY	1	1	1
GOOCHLAND COUNTY	4	0	0
GRAYSON COUNTY	1	0	0
GREENE COUNTY	4	1	2
HALIFAX COUNTY	1	0	0
HAMPTON CITY	39	9	15
HARRISONBURG CITY	30	2	3
HENRICO COUNTY	29	3	8
HENRY COUNTY	0	0	2
ISLE OF WIGHT COUNTY	1	0	0
JAMES CITY COUNTY	21	4	11
KING WILLIAM COUNTY	1	0	0
LOUDOUN COUNTY	126	38	86
LOUISA COUNTY	6	0	0
LYNCHBURG CITY	14	2	2
MANASSAS CITY	21	3	9
MANASSAS PARK CITY	9	0	0
MARTINSVILLE CITY	4	1	0
MECKLENBURG COUNTY	6	3	10
MIDDLESEX COUNTY	1	0	0
NELSON COUNTY	2	0	0
NEW KENT COUNTY	1	1	0
NEWPORT NEWS CITY	58	18	44
NORFOLK CITY	50	11	28
NORTHUMBERLAND COUNTY	2	1	4
NOTTOWAY COUNTY	1	0	0
ORANGE COUNTY	2	1	3
PETERSBURG CITY	17	3	5
PITTSYLVANIA COUNTY	3	1	1

Virginia Localtiy	Noncitizen Registrants	Noncitizen Voters	# of Ballots
PORTSMOUTH CITY	31	10	34
POWHATAN COUNTY	3	0	1
PRINCE EDWARD COUNTY	8	2	3
PRINCE GEORGE COUNTY	9	1	1
PRINCE WILLIAM COUNTY	193	39	92
PULASKI COUNTY	5	1	2
RAPPAHANNOCK COUNTY	1	0	0
RICHMOND CITY	103	19	58
ROANOKE CITY	39	3	5
ROANOKE COUNTY	2	0	0
ROCKINGHAM COUNTY	20	4	9
RUSSELL COUNTY	2	1	1
SALEM CITY	3	0	0
SHENANDOAH COUNTY	4	1	1
SMYTH COUNTY	2	0	0
SPOTSYLVANIA COUNTY	28	2	5
STAFFORD COUNTY	36	6	20
STAUNTON CITY	2	0	0
SUFFOLK CITY	27	11	21
SUSSEX COUNTY	2	1	3
TAZEWELL COUNTY	2	1	1
VIRGINIA BEACH CITY	96	14	38
WARREN COUNTY	8	2	5
WASHINGTON COUNTY	2	2	6
WAYNESBORO CITY	3	0	0
WESTMORELAND COUNTY	1	0	0
WILLIAMSBURG CITY	3	0	0
WINCHESTER CITY	13	1	1
WYTHE COUNTY	2	0	0
YORK COUNTY	15	9	35
Grand Total	**1973**	**399**	**938**

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Report to the Governor and the General Assembly of Virginia

**Operations and Performance of Virginia's
Department of Elections**

2018

Page 11 of 2018 JLARC Report

**All noncitizen removals were from
self-declaration of noncitizen status
at the DMV.**

https://jlarc.virginia.gov/pdfs/reports/Rpt508.pdf

Most of voter registration list stays the same from year to year

Much of Virginia's voter registration list remains stable from year to year. About 4.3 million of the 5.5 million (77 percent) individuals on the list remain eligible to vote in Virginia and continue to live at the same address year to year (Figure 2-1). Compared to the total number of registered voters in Virginia, relatively small proportions are new registrants (7 percent), move out of state (4 percent), or are removed because of being deceased, convicted of a felony, being a non-citizen, or found mentally incapacitated by a court (less than 1 percent each). One of the most frequent reasons for changes to the list—moving within Virginia—affects *where and in which races* an individual can vote, but not *whether* they are eligible to vote.

FIGURE 2-1
Most of Virginia's voter registration list does not change each year

Moved out of state (inactive/canceled) 240,000
Death 53,000 | <1%
Felony conviction 20,000 | <1%
Non-citizen 1,700 | <1%
Mental incapacitation 500 | <1%
Moved within Virginia 517,000 — 4%
New registrant 412,000 — 9%
7%
5,500,000 Registered voters
77%
No change 4,255,800

SOURCE: JLARC analysis of ELECT voter registration and removal data, FY17.
NOTE: Number of voters who moved within Virginia is based on a rough, upper-bound estimate provided by ELECT.

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JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

Commonwealth of Virginia
September 10, 2018

Report to the Governor and the General Assembly of Virginia

Operations and Performance of Virginia's Department of Elections

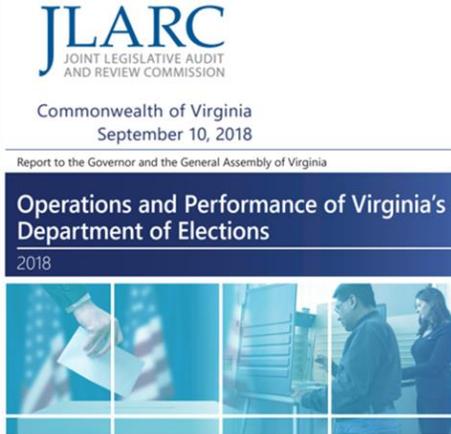2018

Duties of ELECT and General Registrars (GRs)

ELECT and local elections officials share responsibility for the voter registration list

ELECT and general registrars share responsibility for maintaining an accurate statewide list of the roughly 5.5 million individuals registered to vote in Virginia. ELECT has statutory responsibility to "maintain a complete, separate, and accurate record of all registered voters in the Commonwealth" (§ 24.2-404). Registrars are responsible for registering every resident of their locality who is qualified and applies to vote and maintaining accurate and current voter registration records (§§ 24.2-417 and 24.2-114 12).

The voter registration list undergoes constant revision as new voters are added, existing registrations are updated to reflect address changes, and voters are removed if they are no longer living in Virginia, deceased, convicted of a felony, or judged mentally incapacitated by a court. To ensure the voter registration list remains as accurate and current as possible,

- ELECT conducts an initial review of new voter registrations to verify their eligibility. Registrars are required to make the final decision on whether to approve or deny an individual's voter registration.

- ELECT is required by statute to identify potentially ineligible voters through data exchanges with state, local, and federal entities as well as other states.

- General registrars are responsible for reviewing the names of potentially ineligible voters identified by ELECT, verifying that they are ineligible, and removing these voters from the registration list. Registrars can also remove any ineligible voters they identify (subject to state and federal laws).

JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

Commonwealth of Virginia
September 10, 2018

Report to the Governor and the General Assembly of Virginia

Operations and Performance of Virginia's Department of Elections

2018

Given that ELECT was _not_ receiving legal-presence document numbers from DMV from 2013 - 2023, ELECT lacked the ability to verify citizenship of voters or registrants.

Also note use of the word "ability." ELECT admits it does not use SAVE, but opts to use nebulous language that could lead some to believe that it does use SAVE to verify the citizenship status of voters and registrants.

To be clear, DMV does not verify citizenship, nor does it prevent noncitizens from registering to vote.

ELECT has varying ability to verify citizenship when individuals register to vote. The more rigorous verification occurs at DMV and through ELECT's online registration portal. When individuals obtain driver's licenses or identification cards from DMV, ELECT has the ability to verify citizenship of voters through data collected by DMV on individuals who report a noncitizen status when seeking these credentials. DMV also requires proof of legal presence for U.S. citizens (e.g., birth certificate) and for legal noncitizens (e.g., permanent resident card). Most individuals establish legal presence by providing their birth certificate; this information is provided monthly to ELECT, giving the department the ability to verify citizenship for these individuals. Similarly, when individuals register to vote on ELECT's website, they are required to provide their DMV-issued driver's license number. ELECT then uses DMV data to determine whether the individual was previously identified as a noncitizen. ELECT uses this information to prevent noncitizens from registering to vote or to remove them from the registration list. Over the past three years, ELECT has removed a total of 2,783 noncitizens from the voter registration list. There are likely more noncitizens on the registration list, but quantifying the total number of noncitizens on the list is complicated by the broader challenge all government agencies nationwide face in trying to verify citizenship.

Note: 25% of voter registrations in Fairfax County originate outside of the DMV process.

JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

Commonwealth of Virginia
September 10, 2018

Report to the Governor and the General Assembly of Virginia

**Operations and Performance of Virginia's
Department of Elections**
2018

**Simply applying for "access" to
SAVE does nothing to ensure
noncitizens are not registered.**

**ELECT admits it is not using SAVE
and claims "database" is not up-
to-date.**

**Lots of contradiction in these
statements!**

Individuals can also register to vote by completing a paper registration form at numerous local, state, and federal government offices. ELECT is less able to verify the citizenship of individuals registering to vote in this way. For these registrations, ELECT relies heavily on individuals to affirm their citizenship, with a warning that falsely claiming to be a citizen constitutes felony voter fraud. ELECT also determines whether individuals were previously identified as noncitizens before forwarding their names to the appropriate registrars for final determination of their registration eligibility. To ensure noncitizens are not on the voter registration list, statute requires ELECT to apply for access to the federal Systematic Alien Verification for Entitlements (SAVE) program database and the State Board of Elections to promulgate regulations for the department's use of SAVE data (§ 24.2-404 E).

In recent years ELECT has not used SAVE data to verify citizenship status, and this decision appears reasonable. According to ELECT staff, SAVE data is of limited value because it includes only individuals living in the U.S. with a legal immigration status; it does not include undocumented immigrants. Checking the SAVE database requires an alien identification number or other information related to their legal noncitizen status that, by itself, would disqualify an individual from registering to vote. In addition, due to inherent lags in the process of updating the citizenship status of documented immigrants, there is a risk that the SAVE database contains the names of individuals who have since become U.S. citizens. According to ELECT staff and national list maintenance experts, the inaccuracies in the SAVE database could result in the inadvertent disenfranchisement of U.S. citizens. Since 2015, ELECT has formally notified the House and Senate Privileges and Elections Committees of its decision not to use SAVE data and the reasons for this decision.

Data from **SAVE**, the **Systematic Alien Verification for Entitlements** program, allows federal, state, and local government agencies to verify the legal non-citizenship status of individuals.

Gov. Youngkin's Executive Order #31

Issued June 7.2024

Executive Order #31
Issued: June 7, 2024

On <u>Friday, June 7, 2024</u>, VA Governor Glenn Youngkin issued **<u>EO #31</u>** on the "**Establishment of Multi-Agency Data Sharing Protocols Regarding Voter List Maintenance**."

This EO merely outlined and reiterated processes that already exist in Virginia code. The Order was a missed opportunity to mandate an actual audit of Virginia's voter registration and list maintenance practices.

<u>https://www.governor.virginia.gov/media/governorvirgin</u>
<u>iagov/governor-of-virginia/pdf/eo/EO-31-Establishment-</u>
<u>of-Multi-Agency-Data-Sharing-Protocols-Regarding-</u>
<u>Voter-List-Maintenance.pdf</u>

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-ONE (2024)

ESTABLISHMENT OF MULTI-AGENCY DATA SHARING PROTOCOLS REGARDING VOTER LIST MAINTENANCE

By virtue of the authority vested in me as Governor of the Commonwealth, I hereby issue this Executive Order to ensure the accurate, transparent, and reliable use of data among state agencies that will result in best-in-class voter list maintenance processes for the Commonwealth.

Importance of Initiative

Secure elections start with comprehensive list maintenance practices. The interagency exchange of data is a vital component of election administration in the Commonwealth. Transparency and interagency collaboration are essential to ensuring that every eligible Virginian can exercise their right to vote and know that the list of registered voters is accurate and up to date.

Currently, the Department of Elections receives data for list maintenance purposes from a wide variety of state and local entities such as the Department of Motor Vehicles, the Virginia Department of Health, the Virginia State Police, and all 133 Commonwealth Circuit Courts in compliance with state and federal laws. The Department of Elections partners with local electoral boards, general registrars, and their staffs to maintain an accurate list of registered voters, processing thousands of voter registration transactions per month.

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-ONE (2024)

ESTABLISHMENT OF MULTI-AGENCY DATA SHARING PROTOCOLS REGARDING VOTER LIST MAINTENANCE

We commend the Governor and ELECT for exiting VA's contract with ERIC (the Electronic Registration Information Center) in May 2023, and creating data-sharing agreements with **6 states** and **DC**:

Georgia	S. Carolina
Kentucky	Tennessee
Ohio	W. Virginia

However, NCOA mailings could be done even more often.

The process for updating and maintaining the Commonwealth's voter registration system has seen many improvements over the last two years. The Commonwealth has made unprecedented strides in improving the accuracy of its voter list through audits of all list maintenance practices. As a result, Virginia has been nationally recognized for its robust list maintenance improvements and new initiatives.

These robust improvements include:

- Establishing one-to-one data sharing agreements with seven states.
- Documenting detailed data requirements and coordinating with interfacing agencies.
- Conducting two National Change of Address mailings in 2023 for the first time in Virginia history.
- Automating a solution to ensure individuals convicted of a new felony after their rights have been restored are removed from the voter list, which was not occurring previously, addressing miscoded data.
- Streamlining processes for the removal of deceased voters including acquiring access to a national death record database and conducting an audit of Virginia deceased records since 1960.

The continued improvement of the Commonwealth's list maintenance processes is largely contingent upon the quality and timeliness of the interagency data provided to the Department of Elections for processing. As Virginia transitions to a new statewide voter registration system targeted for delivery next year, it is imperative to acknowledge the shared responsibility held not only by the Department of Elections, but all other entities within the Commonwealth that provide data. Therefore, it is essential that these entities review the accuracy, validity, timeliness, and reliability of the data they provide to the Department of Elections for processing. An accurate voter list is established through the existing collaborative efforts which should be leveraged for a best-in-class list maintenance process.

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-ONE (2024)

ESTABLISHMENT OF MULTI-AGENCY DATA SHARING PROTOCOLS REGARDING VOTER LIST MAINTENANCE

ELECT has *no* data-sharing agreements with any of the 5 Dept. of Social Services agencies who utilize SAVE for:

- **Medicaid**
- **Food Stamps**
- **TANF**
- **Refugee Assistance**
- **Unemployment Benefits**

Directive

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution of Virginia and the laws of the Commonwealth:

I. Adopt Data Sharing Agreements Between State Agencies

I hereby direct the Department of Elections, the Department of Health, the Department of Motor Vehicles, and the Virginia State Police to update data sharing agreements between those agencies within 90 days from the effective date of this Executive Order. The agreements shall indicate the applicable state or federal law that permits the sharing of Commonwealth data, the designated contact for each agency, and any other responsibility to ensure the accuracy, reliability, privacy, and efficiency of the data used for list maintenance. These agreements shall be reviewed annually.

II. Create an Interagency Data Review Work Group

I hereby direct the following agencies to create and participate in an interagency data review work group, including other stakeholders as may be deemed necessary, to examine and make recommendations regarding the quality, accuracy, sharing, and security of Commonwealth data provided to the Department of Elections for use in the existing Voter Election Registration Information System in support of conversion to the new statewide voter registration system scheduled for implementation mid-2025:

- Virginia Information Technologies Agency
- Office of Data Governance
- Department of Health
- Department of Motor Vehicles
- Virginia State Police

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-ONE (2024)

**ESTABLISHMENT OF MULTI-AGENCY DATA SHARING PROTOCOLS
REGARDING VOTER LIST MAINTENANCE**

This effort shall develop comprehensive best practices across agencies and offer recommendations that make necessary and effective changes to the Commonwealth's list maintenance processes. The work group shall review and verify the accuracy and source of data inputs provided and ensure all data provided meets applicable state and federal requirements. The work group shall identify opportunities to standardize data exchanged between agencies to better facilitate accurate and documented conversion to the new Elections system. Within 120 days of the effective date of this Executive Order, the Department of Elections shall report to the Secretary of Administration on the status of the work group.

III. Adopt Data Sharing Standards Between State Agencies

In alignment with the findings and recommendations of the work group, I hereby direct the Department of Elections to develop data sharing standards for the source, transmission, and receipt of information provided by each state agency that shares data for list maintenance processing.

The standards adopted shall indicate data attributes, extract specifications, and processes for the secure transmission and receipt of data. The participating agencies shall integrate the Department of Elections' requirements into upcoming system and data modernization projects. These standards shall be reviewed annually.

IV. Adopt Memoranda of Understanding with Additional States

In addition to exchanging registered voter lists with states bordering the Commonwealth pursuant to Code of Virginia § 24.2-404.4, I hereby direct the Department of Elections to also provide and request voter registration information and lists of individuals who voted in primaries and elections, where available, to and from other states.

The Department shall use this information to identify duplicate registrations, voters who no longer reside in the Commonwealth, and other persons who are no longer entitled to be registered, to maintain the overall accuracy of the voter registration system.

Gov. Youngkin's Executive Order #35

Issued August 7, 2024

Executive Order #35

Issued: August 7, 2024

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-FIVE (2024)

COMPREHENSIVE ELECTION SECURITY PROTECTING LEGAL VOTERS AND ACCURATE COUNTING

ELECT has no agreement with the SSA, and General Registrars (GRs) do not verify SSNs (with name and DOB), much less citizenship status, for non-DMV voter registrations.

The DMV has no agreement with the SSA for SSN verification for voter registration purposes.

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to protect the casting of legal ballots by legally eligible voters in Virginia's elections, including with stringent ballot security, complete and thorough counting machine testing, and best-in-the-nation voter list maintenance.

Importance of Initiative

In Virginia, we have established a comprehensive approach and continuous improvement process for election security, which is necessary to ensure that individuals cast legal votes. The Virginia model for securing elections has proven itself over the past few years despite the significant expansion of voting days and locations and the lingering effects of the pandemic on state and local governments. Under my Administration, Virginia has made unprecedented strides in improving the accuracy of our voter list including substantial updates for removal of deceased voters and protection against non-citizen registration.

Recent improvements we have made include establishing comprehensive data-sharing agreements with seven states and receiving additional data from 42 states.

We conducted multiple National Change of Address mailings over the past two years and will continue to conduct them. This process identifies individuals who no longer reside in Virginia. The streamlined process for eliminating deceased voters includes accessing a national death record database and conducting a comprehensive audit. This resulted in us removing 79,867 deceased voters in 2023.

Virginia is one of only three states in the nation that require those registering to vote to provide their full 9-digit social security number for registration. Over ninety percent of voters in Virginia submit electronic registration applications online through the Department of Elections (ELECT), which requires a valid Department of Motor Vehicles (DMV) credential, or submit registration applications when conducting transactions with DMV.

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Exec. Order #35 (Cont.)

DMV does not verify citizenship; DMV uses SAVE to verify the validity of the documents presented by customers.

Per correspondence from DMV Commissioner, it appears DMV had only been providing to ELECT the document numbers for noncitizens who self-declare non-citizenship status.

ELECT has no data-sharing agreements with the Designated State Agencies (DSAs) for
- Medicaid
- Food Stamps
- TANF
- Refugee Assistance
- Unemployment Insurance

No comprehensive audits have been conducted.

Current VA Code intends for ELECT to utilize SAVE for citizenship verification for voter registration & list maintenance, and ELECT has never issued the legally-mandated "rules and regulations" to implement its use of SAVE.

DMV requires applicants to submit proof of identity and legal presence for those that do not yet hold a valid Virginia credential. When issuing a credential such as a driver's license, DMV verifies applicants' proof of identity and legal status with the Department Homeland Security Systematic Alien Verification for Entitlements (SAVE) database and the Social Security Administration database.

All data collected by the DMV that identifies non-citizens is shared with ELECT, which uses it to scrub existing voter rolls and remove non-citizens who may have purposefully or accidentally registered to vote. According to data from ELECT, between January 2022 and July 2024, records indicate we removed 6,303 non-citizens from the voter rolls.

Executive Order 31 reinforced the need for timeliness of interagency data. The multi-agency data sharing protocols and standards developed by the working group called for in the Executive Order ensure the accuracy, reliability, privacy, and timeliness of the data used for list maintenance.

The audits we conduct of Virginia's list maintenance practices have not only been effective but have also earned national recognition for robust list maintenance improvements and new initiatives. This recognition is a testament to the fairness, transparency, and legality of Virginia's voting process, which includes:

- 100% paper ballots which provide a physical record of the voter's intent
- Use of paper ballot counting machines, not voting machines
- Strict chain of custody for ballots with daily reconciliation during early voting
- Application required to receive a mail ballot - no mass mailing of ballots
- Counting machines tested prior to every election
- Counting machines not connected to the internet
- Drop boxes under 24/7 monitoring

As we continue to make improvements, the Commonwealth will remain steadfast in its efforts to provide Virginians with the confidence they deserve in their elections. Our election security model is designed to prevent illegal votes and guarantee legal votes are accurately counted. However, security procedures can only be as strong as the state and federal law which governs voting. Further strengthening of Virginia's election security system will rely on strengthening state and federal law.

Section 1(e) of Youngkin's EO directs ELECT to remove individuals unable to "verify" citizenship to DMV.

For legally-present noncitizens, DMV does not verify citizenship; DMV only utilizes SAVE to verify the validity of the documents presented by DMV customers.

Per correspondence from DMV Commissioner, it appears DMV *until very recently*, had only provided to ELECT the legal-presence document numbers for noncitizens who self-declared non-citizenship status, even though VA Code stipulates *all* document numbers.

Certification of Accuracy of Voter Lists

The Commissioner of the Department of Elections shall certify in writing to the Governor that the following election security procedures are in place to protect voter lists:

1. Daily Updates to the Voter List to:
   a. Add new eligible voters.
   b. Remove voters who have moved in accordance with federal and state law.
   c. Remove deceased voters.
   d. Remove ineligible voters, including felons and mentally incapacitated.
   e. Remove individuals who are unable to verify that they are citizens to the Department of Motor Vehicles from the statewide voter registration list, should that individual either intentionally or unintentionally attempt to register to vote, in accordance with federal and state law.
   f. The Department of Elections compares the list of individuals who have been identified as non-citizens to the list of existing registered voters and then registrars notify any matches of their pending cancellation unless they affirm their citizenship within 14 days.

2. When issuing a credential such as a driver's license, DMV verifies applicants' proof of identity and legal status with the Department Homeland Security Systematic Alien Verification for Entitlements (SAVE) database and the Social Security Administration database.

No document numbers were provided to ELECT from 2013 to mid-2023, and DMV correspondence indicates the provision of all document numbers occurred in the last few months.

Exec. Order #35 (Cont.)

Both the 2014 and 2021 data-sharing agreements (MOUs) between ELECT & DMV outline the monthly transfer of noncitizen documentation to be provided to ELECT by DMV. Youngkin's EO expedites this process from monthly to daily which is a significant improvement.

Referral for False Claims of Citizenship

The Department of Motor Vehicles shall expedite the interagency data sharing with the Department of Elections of non-citizens by generating a daily file of all non-citizens transactions, including addresses and document numbers.

In accordance with the *Code of Virginia* § 24.2-429, all registrars are required to cancel the registrations of non-citizens who have registered to vote in a local, state, or federal election by falsely claiming that they are a citizen, including the forging of documentation or any other means of improper registration. *Code of Virginia* § 24.2-1019 additionally requires said registrars to immediately notify the Commonwealth's Attorney for their jurisdiction of this alleged unlawful conduct. Additionally, the Office of the Attorney General has full authority to enforce election laws pursuant to *Code of Virginia* § 24.2-104.

However, it is unclear if and when the DMV began providing to ELECT **_all_** legal-presence document numbers as required, and whether ELECT has retroactively assessed the DMV data for:
1) the 10-year period for which no document numbers were provided, or
2) the past year during which limited document numbers likely were provided.

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-ONE (2024)

**ESTABLISHMENT OF MULTI-AGENCY DATA SHARING PROTOCOLS
REGARDING VOTER LIST MAINTENANCE**

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by further executive order or directive. Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of June 2024.

Glenn Youngkin, Governor

Attest:

Kelly Gee, Secretary of the Commonwealth

What Are the <u>Current Goals</u> to Address Noncitizen Voter Registration and Voting in VA?

1. **Achieve Compliance with Law**

2. **Address Previous Noncompliance & Failures to Act**

3. **Ensure Future Compliance & Action**

Our Recently-Submitted Proposed Executive Order

DRAFT Proposed Exec. Order

that Ann Grigorian and I submitted last week to Gov. Youngkin for consideration, and we cc'd:

1. **Sec. of Admin Lyn McDermid**
2. **ELECT Commissioner Beals**
3. **DMV Commissioner Lackey**

While EO #35 directed the transfer of document numbers on a daily basis, it did not expressly require the data to be used for any specific purpose or process (i.e., ELECTs use of SAVE).

The proposed **Executive Order directs ELECT to utilize the document numbers as allowed under Virginia law**.

Proposed Text for Executive Order

Executive Order

NUMBER ## (2024)

ADOPTION OF ADDITIONAL MEASURES TO SECURE THE INTEGRITY OF THE COMMONWEALTH'S VOTER LIST MAINTENANCE PRACTICES

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to further protect the casting of legal ballots by legally qualified voters in Virginia's elections by guaranteeing all relevant data is expeditiously and effectively utilized to confirm the identity and eligibility of voters and voter registrants and to enhance the Commonwealth's voter list maintenance practices.

Importance of Initiative

Recently, in Executive Order Number Thirty-Five (2024), I directed the Department of Motor Vehicles (DMV) to expedite the interagency data sharing process with the Virginia Department of Elections (ELECT) by generating a daily file of all non-citizen DMV transactions, including names, addresses, and document numbers. Such transmission shall apply as directed under §46.2-328.1(E) to all individuals who provide documentation other than legal presence and shall not be limited to only those individuals who self-declare not to be U.S. citizens. While most non-citizens opt to self-declare their non-citizenship status and correctly decline voter registration at the DMV, some do register either intentionally or inadvertently, and ELECT's use of the Department of Homeland Security (DHS) Systematic Alien Verification for Entitlements (SAVE) program will identify and reject these illegal registrations. Additionally, should noncitizens attempt to register outside of the DMV process, the interagency data sharing procedures and ELECT's use of SAVE will also help identify these illegal registrations.

DRAFT Proposed Exec. Order (Cont.)

that Ann Grigorian and I submitted last week to Gov. Youngkin for consideration, and we cc'd:

1. Sec. of Admin Lyn McDermid
2. ELECT Commissioner Beals
3. DMV Commissioner Lackey

ELECT must use the newly transmitted document numbers to conduct SAVE verifications on voter registration applications with a corresponding match with a person noncitizen document list provided by DMV to verify citizenship status prior to issuing notice of cancellation.

Designated State Voter Registrations Agencies must also share document numbers in their possession to allow ELECT to properly conduct citizenship verification on any voter registration applications that might be submitted outside of DMV and/or prior to interaction with the DMV.

Proposed Text for Executive Order

Directive

Building on my recent initiatives to ensure that individuals cast legal votes in Virginia, I direct-that:

1. ELECT shall use the SAVE program to independently verify the citizenship status of all voter registration applicants who either purposefully or accidentally affirm citizenship, but for whom documentation exists indicating they may not be U.S. citizens. Virginia law already allows for ELECT to employ SAVE, and ELECT has had in place since 2014 the necessary memorandum of agreement (MOA) with DHS to run SAVE verifications. This additional layer of citizenship verification via SAVE will allow ELECT to more accurately ensure that voter registration applications are only approved for legally-eligible voters regardless of the point of origination.

2. ELECT shall implement additional data sharing agreements with the Virginia Departments of Social Services and the Virginia Racing Commission. Like the DMV, each of these agencies already employs the SAVE program when issuing benefits or licenses, and all were deemed Designated State Agencies (DSAs) for voter registration purposes under the National Voter Registration Act (NVRA). These additional data sharing arrangements will ensure ELECT is rapidly provided with all relevant and appropriate information that is available for ELECT to use for voter registration and list maintenance purposes designed to ensure only legally qualified voters are registered.

DRAFT Proposed Exec. Order (Cont.)

that Ann Grigorian and I submitted
last week to Gov. Youngkin for
consideration, and we cc'd:

1. Sec. of Admin Lyn McDermid
2. ELECT Commissioner Beals
3. DMV Commissioner Lackey

Because VA requires full SSN for voter registration, VA is exempt from the requirement to use a SSA program called Help America Vote Verification (HAVV) available to states that only require the last four #s of a SSN. Consequently, VA is not verifying SSNs! The **current DMV agreement with SSA** (for issuing driving credentials) **does _not_ allow sharing of this SSN data with ELECT**. The proposed EO directs DMV to enter into separate agreement with SSA to allow SSN Verification to:

a. Use authority already granted in law **52 USC 21083 § 21083(a)(5)(D)** to enter into such agreement.
b. Proactively use SSN verification prior to approving a voter registration.
c. Identify SSN data errors in existing RVL.

Proposed Text for Executive Order

3. The DMV shall enter into an information exchange agreement (IEA) with the Social Security Administration (SSA) that would allow for full Social Security Number (SSN) verification for voter registration purposes, including Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) registrations. The DMV already has an IEA with the SSA to verify SSNs for the purposes of issuing driving credentials and identification cards, however, the current IEA precludes DMV from verifying SSNs for voter registration purposes. Because Virginia law requires individuals to provide their full SSN when registering to vote, a separate IEA between the DMV and SSA is necessary to allow the DMV to comply with existing state law and assist ELECT in verifying SSNs for voter registration. Specifically, this new agreement would:

   a. Enable the DMV to administer voter registration information verification system services for full SSNs concerning voter registration through the DMV per the requirements of 52 U.S.C. § 21083(a)(5)(D).

   b. Enable DMV to provide to ELECT SSN verification services for voter registration applicants who register to vote outside of the DMV and/or for registrants who do not possess a driver's license or ID card issued by the DMV.

   c. Allow ELECT to identify and assess duplicate SSNs already existing in Virginia's Registered Voter List (RVL) to determine if there are data errors and/or mismatched numbers associated with existing registered voters.

DRAFT Proposed Exec. Order (Cont.)

that Ann Grigorian and I submitted last week to Gov. Youngkin for consideration, and we cc'd:

1. Sec. of Admin Lyn McDermid
2. ELECT Commissioner Beals
3. DMV Commissioner Lackey

Voter registration applications originating outside of the DMV currently are verified through DMV for a **match on 3 data elements: first name, last name, and DOB**. The proposed EO directs DMV and ELECT to update their current MOU to **add the SSN as a fourth data match element**.

It further directs that **if any of the four match elements returns as a negative, the voter will be provisionally registered** and notified by the registrar to correct his record. Until the record is corrected, the voter will only be able to vote a provisional ballot.

Proposed Text for Executive Order

4. The DMV and ELECT shall update their existing data sharing agreement to include SSN verification as a required data element to enhance proof of identity verification for voter registrants. Currently, the DMV provides for exact matching processes for three data elements (first name, last name, and date-of-birth (DOB)). The additional requirement for exact matching of the SSN for voter registration purposes is necessary to confirm voter identity, detect fraudulent activity, and reduce errors in data exchange and management.

Under this new process requirement:

a. DMV shall indicate which of the four required data elements (first name, last name, DOB, and SSN) do not match exactly. Any voter registration that returns other than an exact match on all four data elements, but is otherwise qualified, shall be provisionally registered pending necessary verification conducted by ELECT and/or the appropriate General Registrar (GR).

b. To remedy the mismatched data, either ELECT or the appropriate GR shall notify the applicant at the address (and email if available) provided on the voter registration application informing the applicant of his or her provisional registration status. Such notice shall inform the applicant of the information on his or her application that did not match the information as provided by the DMV and shall provide the opportunity for the registrant to correct the information.

DRAFT Proposed Exec. Order (Cont.)

that Ann Grigorian and I submitted last week to Gov. Youngkin for consideration, and we cc'd:

1. Sec. of Admin Lyn McDermid
2. ELECT Commissioner Beals
3. DMV Commissioner Lackey

Process and system failures over the last 8 years began with the electronic integration of DMV's voter registration process with ELECT in 2016. Since then, errant registration data from DMV has included citizens being identified as noncitizens, noncitizens being identified as citizens, and files failing to be transmitted. No audit has ever been requested by ELECT as allowed under the MOU with DMV. Per the pending transfer of VERIS to SRVS (to be managed by a 3rd party vendor – The Canton Group) in Feb. 2025, such an audit is warranted.

Proposed Text for Executive Order

5. ELECT shall conduct a full forensic audit of the Commonwealth's Registered Voter List (RVL) prior to the scheduled 2025 replacement of Virginia's Election and Registration Information System (VERIS) and attendant database management transfer to the new Statewide Voter Registration System (SVRS) under contract with The Canton Group. This audit will correct any inaccuracies within the data and existing registrations by applying all relevant data and list maintenance tools. As Virginia transitions to a new statewide voter registration and voter database, it is imperative to delineate, integrate, and streamline all integral data sharing partners and processes to support this conversion.

The agreements outlined herein have indicated both the appropriate state or federal entity as well as the applicable state or federal law that permits the sharing of data and the responsible entities to ensure the accuracy, reliability, privacy, and efficiency of the data used for voter registration and list maintenance.

Given under my hand and under the Seal of the Commonwealth of Virginia this XX day of September, 2024.

Glenn Youngkin, Governor

Gov. Youngkin has _not_ signed our Proposed, UNOFFICIAL Exec. Order

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Summary
&
Key Points

What Are the Current Goals For Addressing Noncitizen Voter Registration and Voting in Virginia?

1) **<u>Achieve Compliance with Law</u>**

   Address DMV's and ELECT's past (and any current) non-compliance with VA law stipulating what data are to be provided by DMV to ELECT on a regular (monthly) basis, and ELECT's failure to: 1) <u>directly utilize SAVE</u>, 2) <u>promulgate rules and regulations</u> governing the use of immigration and citizenship status information received from the SAVE Program for voter registration and list maintenance, 3) <u>obtain and utilize relevant information from DMV and other state agencies</u>, and 4) <u>provide relevant information to GRs</u>.

2) **<u>Address Previous Noncompliance & Failures to Act</u>**

   Given DMV's and ELECT's past noncompliance and failures, consider what avenues exist to force ELECT (and thereby allow GRs) to analyze VA's RVL to identify and remove noncitizens and determine whether such individuals have voted in the past.

3) **<u>Ensure Future Compliance & Action</u>**

   Assess what remedies exist for compelling 1) DMV to enter agreement with SSA for SSN verification for voter registration, 2) ELECT to utilize SAVE and all available data sets and resources to ensure only US citizens and VA residents are added to VA's voter rolls, and 3) ELECT to provide to the GRs the data necessary for them to ensure that only US citizens and VA residents are registered to vote at the local level.

Summary of Issues: ELECT

- Failed to notice, remedy, or investigate that, for over a decade, DMV only provided LP Codes rather than the legally-mandated document numbers as required.

- Failed for over two years (2020-2022) to notice or remedy the deletion of the noncompliant Legal Presence (LP) Codes transmitted in place of the legally-required document numbers.

- Failed, and continues to fail, to independently utilize the SAVE program to identify existing and new noncitizen registrations and to provide appropriate cancellation notices (for SAVE cancellations).

- Failed to aggregate and utilize available data (from DMV and other sources) to identify noncitizen registrations originating outside of the DMV registration process, including for UOCAVA applications.

- Is noncompliant with the 2013 and 2014 mandates to promulgate rules and regulations governing its use of SAVE and the data generated from SAVE.

- Failed to demand an audit of DMV process (per MOU), neglecting duty to identify and address the many process and data issues since the 2016 implementation of Electronic Voter Registration with DMV.

- Failed to establish data-sharing agreements with the other state agencies that: 1) utilize SAVE, 2) are designated as voter registration entities, and 3) are likely to encounter noncitizen registrants.

- Failed to provide GRs with direct access to pertinent and relevant noncitizen data or with the necessary means to verify SSNs and/or citizenship of voter registrants.

- **No audit of ELECT or VA's 133 local elections offices has ever been performed**.

Summary of Issues: DMV

- The NVRA requires DMV to allow all customers conducting a qualifying transaction to access the "Motor Voter" registration screen -- even those who present legal-presence noncitizen documents validated in the same transaction which clearly disqualify them from registering to vote.

- DMV agents (and DSA employees) are instructed to assist known noncitizens in completing the voter registration application process if assistance is requested and is equal to assistance provided to conducting the qualifying transaction.

- DMV allegedly allowed noncitizens who lacked legal-presence documents the opportunity to register to vote and allegedly ended this activity in April or May of this year.

- DMV failed to provide to ELECT the legally-mandated document numbers (obtained from legal presence documents) from 2013 to through May 2023. And from April 2020 to August 2023, DMV failed to even provide LP Codes associated with legal-presence documents.

- EO #35 does not explicitly state that the expedited document transmission applies to all noncitizen documents and not just to documents for those individuals who self-declare noncitizen status.

- **Already, over 13,000 potential noncitizens have been identified on VA's RVL over the last decade, and well over a thousand of these individuals have cast ballots in VA's elections.**

- **No criminal charges have been filed at the state or local levels.**

10 Key Points For Action to Remedy
Noncitizen Voter Registration & Voting in VA

1. ELECT needs to utilize the SAVE program to independently verify the citizenship status of all voter registration applicants for whom documentation exists indicating they may not be US Citizens.

2. At a minimum, ELECT needs to establish data-sharing agreements with the five DSAs that issue benefits for medicaid, food stamps, TANF, refugee assistance, and unemployment insurance, as well as the VA Racing Commission, especially given their use of the SAVE Program.

3. Given the NVRA mandates that voter registration opportunities be provided by MVAs/DMVs and DSAs, Governor Youngkin should stipulate that: 1) agency employees must remind all individuals who present noncitizen documents that it is a felony to both register and vote if you are not a U.S. Citizen, and 2) agency employees are not mandated to assist individuals with voter registration if such individuals present and conduct transactions using legal-presence documents.

4. DMV needs to enter into an information exchange agreement (IEA) with the SSA to allow for full SSN verification for voter registration purposes, especially for voter registrations that originate outside the DMV process and for registrants who do not have a driver's license.

5. DMV and ELECT need to update their existing data sharing agreement (MOU) to:

   a) reflect Governor Yougkin's expedited transfer (from monthly to daily) of noncitizen document numbers,

   b) explicitly state that ALL document numbers for noncitizens who present legal-presence documents shall be transmitted to ELECT (including those who do not self-declare noncitizen status).

   c) add the SSN to the existing match indicators of First Name, Last Name, and DOB.

10 Key Points For Action to Remedy
Noncitizen Voter Registration & Voting in VA (Cont.)

6. DMV should update their existing technology to automatically deny voter registration opportunities those applying for Driver Privilege Cards (DPCs) or Identity Privilege Cards (IPCs) pursuant to VA law (§24.2-411.3).

7. Per a DMV employee/informant, DMV allegedly gave access to voter registration (Motor-Voter screens) to DPC and IPC applicants/holders for 3 years (2021-2024). If true, DMV needs to analyze all DPC/IPC holders to see if they're on the RVL, send Cancellation Notices as appropriate, determine whether these individuals have voted in the past, and prosecute as appropriate.

8. As an Automatic Voter Registration (AVR) state, DMV customers (including noncitizens obtaining LDDLs) are offered voter registration opportunities, and the honor system is used for them to OPT-OUT. While DMV must follow federal and state law, the DMV kiosk screen order and questions should be adjusted for clarity and error reduction.

9. VA Code directed ELECT (in 2013) to promulgate "rules and regulations" governing the use of the immigration and citizenship status information (derived from DMV, ELECT's use of SAVE, and other state agencies) for voter registration and list maintenance purposes. To protect against removing citizens while also ensuring noncitizens are not registered to vote, ELECT must develop necessary and detailed rules and regulations to ensure: 1) uniform treatment under the law; 2) adherence to federal, state, and DHS requirements; and 3) eliminate reliance on legacy data to administer the program.

10. ELECT needs to conduct a full forensic audit of VA's Registered Voter List (RVL) prior to the scheduled 2025 replacement of VERIS with SVRS and transfer of database management to The Canton Group.