



PROOF OF CITIZENSHIP

Summary

- Requirements that voters show official proof of citizenship will disenfranchise many eligible citizens.
- Official citizenship documents are expensive and time-consuming to obtain.
- Proof of citizenship requirements are an invitation to discrimination.
- Blocking eligible voters who cannot show documentation violates the Constitution and federal law.
- Proof of citizenship requirements do not address any serious or widespread problem.
- States should not implement burdensome proof of citizenship requirements.

Requirements that voters show official proof of citizenship will disenfranchise many eligible citizens. Many people believe that all Americans have readily available documents that prove their citizenship. This is simply not the case. Very few official documents actually establish citizenship: birth certificates, naturalization certificates, and passports are among the rare examples. Americans who have this paperwork do not usually carry it around with them. And many people store the documents with a family member or in a safe deposit box, far from a current residence. For other citizens, birth certificates simply do not exist. Those born on reservations or outside a hospital, for example, may never have been issued official birth documents. Victims of natural disasters, such as Katrina survivors, may have had their original birth certificates destroyed.

Thus far, there are no nationwide studies documenting the number of Americans who do not have documentary proof of citizenship. Nonetheless, there is strong evidence that requiring proof of citizenship to vote would lead to disastrous results. In the first primary election after the implementation of a proof of citizenship requirement in Arizona, 75% of new registrants in Arizona's largest county were rejected for failure to provide documentation. Although that rate has fallen after two years of intense public education, 17% of new registrants – almost all of whom are recognized by state officials to be eligible citizens – are still being rejected. At that rate, millions of eligible citizens would be rejected nationwide.

Official citizenship documents are expensive and time-consuming to obtain.

Even when it is possible to procure citizenship documents, it is an expensive and time-consuming process. A replacement birth certificate can exceed \$40, and a passport costs \$97. For naturalized Americans, replacement citizenship documents cost \$220. Potential voters must also navigate cumbersome government agencies, which often involves taking time from work in order to travel to a specific office, fill out forms, and stand in line. The processing time for requests may last as long as a *year* – during which time an eligible citizen would be deprived of her right to vote.

Proof of citizenship requirements are an invitation to discrimination.

Some proof of citizenship requirements apply to voters who are “challenged” at the polls. Ohio has one such law, which is the same law amended just after the Civil War to allow challenges to voters with a “distinct and visible admixture of African blood.” Although racial appearance is no longer an express ground for challenge, experience shows that voters who “look foreign” are still likely to be challenged more often. A recent study in New York City, for example, found that poll workers illegally asked one in six Asian Americans for identification at the polls, while white voters were able to vote without identification. Proof of citizenship requirements are susceptible to the same biased implementation.

Blocking eligible voters who cannot show documentation violates the Constitution and federal law.

The Supreme Court requires meticulous scrutiny of state regulations that place serious burdens on citizens' fundamental right to vote. Only those laws narrowly tailored to advance a compelling state interest have been allowed to stand. Proof of citizenship requirements unduly deny the right to vote to citizens without available documentation. Moreover, because of the high cost of the necessary official documents, proof of citizenship requirements also serve as an unconstitutional poll tax. Proof of citizenship requirements also violate federal voter registration statutes. In 1993, Congress passed the National Voter Registration Act (also known as the "Motor/Voter" law), in order to facilitate voter registration. Among other things, the law standardizes the information requested of registrants through a uniform federal registration form. During consideration of the law, Congress specifically rejected an attempt to require proof of citizenship as part of that form. Earlier this year, the federal agency with the authority to interpret the Motor/Voter law clearly explained that states may not impose requirements – like proof of citizenship – over and above the information required on the federal form itself.

Proof of citizenship requirements do not address any serious or widespread problem.

There is no epidemic of non-citizen voting that justifies a documentation policy likely to exclude hundreds of thousands of eligible citizens. Non-citizens who vote illegally risk 5 years in prison and a \$10,000 fine and could face immigration-related consequences such as deportation or removal, all for the chance to cast one incremental vote. Few individuals think the tradeoff worthwhile.

Those favoring restrictions on the right to vote repeatedly cite a smattering of anecdotes describing non-citizens on the registration rolls, some of whom may have voted. Such instances are exceedingly rare and usually unintentional. Moreover, some of the canonical anecdotes – like officials discovering non-citizens registered in some Maryland cities – describe practices that are perfectly legal: these Maryland cities, for example, allow non-citizens to vote in local elections. Other anecdotes – like the uncertain "match" of an eligible voter's name to a list of ostensibly illegal immigrants, or the presumption that individuals are illegal non-citizens if their names "appear to be from outside the United States" – have been thoroughly debunked.

States should not implement burdensome proof of citizenship requirements.

Although proving one's citizenship may sound straightforward, most citizens do not have sufficient documentation readily at hand, and many face extreme difficulty in obtaining the necessary documents. Restrictive proof of citizenship requirements will therefore disenfranchise eligible voters, artificially depress turnout, and lead to administrative difficulties at the polls. Moreover, because there is no national problem of non-citizen voting, and no reasonable prospect of such a problem in the near future, there is no reason to incur such high cost. States without widespread evidence of actual non-citizen votes should not turn to dangerous proof of citizenship requirements.

THE WORK OF THE BRENNAN CENTER

- ▶ **National.** Following the report of the 2005 Commission on Federal Election Reform (the "Carter-Baker Commission"), the Brennan Center and Commissioner Spencer Overton prepared the most detailed critique to date of proposals to implement restrictive rules making documentation of citizenship a prerequisite for voting nationwide.
- ▶ **Ohio.** In 2006, the Brennan Center and co-counsel brought suit in federal court to challenge the legality of Ohio's provision demanding that naturalized citizens present a naturalization certificate if challenged at the polls, while allowing native-born citizens simply to attest to their citizenship. The case is currently pending