

**SUBJECT:** Proof of citizenship in order to register to vote

**COMMITTEE:** Elections — committee substitute recommended

**VOTE:** 4 ayes — Berman, Bohac, England, C. Howard  
0 nays  
3 absent — Anchia, Burnam, Farias

**WITNESSES:** For — Tina Benkiser, Republican Party of Texas; Ed Johnson, Harris County Tax Office; Skipper Wallace, Texas Republican County Chairman's Association; Bill Borden; (*Registered, but did not testify*: John Colyandro, Texas Conservative Coalition; Russ Duerstine, Tom Green County G.O.P.; Marty Forte, Dallas County Republican Party; Carolyn Galloway, Texas Eagle Forum and Citizens for Immigration Reform; Mary Ann Collins)

Against — Lydia Camarillo, Southwest Voter Registration Education Project (SVREP); John Courage and Teri Sperry, True Courage Action Network; Luis Figueroa, MALDEF; Sonia Santana, ACLU-Texas; Bryson McCall Smith, Coalition of Texans with Disabilities; Laurie Vanhooose, Advocacy, Inc.; Kenneth Flippin; (*Registered, but did not testify*: Joy Arthur, People for the American Way; Ken Bailey, Texas Democratic Party; Mario Champion, Latinos for Texas; Debra Cody and Connie Hooks, City of College Station; Kathryn Dean, ACLU; Mary Finch, League of Women Voters of Texas; Will Harrell, NAACP of Texas; Paula Littles, Texas AFL-CIO; Toni Milam, City of Buda; Tim Morstad, AARP; Jodi Park, Coalition of Texans with Disabilities; Marcelo Tafoya, League of Latin American Citizens (LULAC); Suzy Woodford, Common Cause Texas; Susan Barrick; Perry Dorren; Ysidro Gutierrez; Johnnie Jones; Kenneth McElveen)

On — Adrienne McFarland, Office of the Attorney General; Ann McGeehan, Office of the Secretary of State; (*Registered, but did not testify*: Steve Raborn, Tarrant County Elections)

**BACKGROUND:** Election Code, ch. 13 governs the voter registration application process, including eligibility criteria to vote in Texas. Sec. 13.002 requires a prospective voter to sign and submit in writing, by personal delivery or

mail, an application to the county registrar. The voter registration application must include the following information about the applicant:

- first name, middle name (if any), last name, and former name (if any);
- complete birth date;
- residence address, or the address at which the applicant receives mail and a concise description of that location;
- the city and county in which the applicant formerly resided;
- a statement verifying U.S. citizenship;
- a statement verifying residency in the county;
- a statement verifying that the applicant has not been determined mentally incompetent by a final judgment of a court;
- a statement verifying that the applicant is not ineligible to vote due to a felony conviction or that the applicant is a felon who nevertheless is eligible to register; and
- if the application is made by an agent, a statement of the agent's relationship to the applicant.

In addition, the application must contain either the applicant's Texas driver's license number, the number of a personal identification card issued by the Department of Public Safety (DPS), or a statement indicating that the applicant has not been issued either form of identification, in which case the applicant must include the last four digits of the applicant's Social Security number or a statement that the applicant has not been issued a social security number.

Under Election Code, sec. 13.007, a person who knowingly makes a false statement, or in some way is responsible for another person making a false statement, on a voter registration application can be charged with a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

Federal law, 18 U.S.C. 911, allows for anyone who falsely and willfully represents himself to be a U.S. citizen to be fined up to \$250,000 or imprisoned up to three years, or both.

It is unlawful under 18 U.S.C. 611 for any alien to vote in any election that involves electing a candidate for federal office. This does not apply to an alien if each natural parent or adoptive parent was a citizen by birth or naturalization; the alien permanently resided in the United States before

reaching age 16; and the alien reasonably believed at the time of voting that he or she was a U.S. citizen. A violation under this section is punishable by a fine of up to \$100,000 or imprisonment up to one year, or both.

**DIGEST:** CSHB 626 would require a voter registration application to include a certified copy of a document providing proof that the applicant was a U.S. citizen. The bill would amend Election Code, sec. 13.002 to specify the following as acceptable proof of citizenship:

- a birth certificate or other document admissible in a court of law confirming birth;
- U.S. citizenship papers issued to the applicant; or
- an unexpired U.S. passport issued to the applicant.

The bill also would amend Election Code, sec. 13.121(a) to require the use of business reply mail instead of a reply postcard to submit an official voter registration application by mail, unless the state used another postage-paid form or system.

The bill would take effect September 1, 2007, and would apply only to applications for voter registration submitted on or after that date.

**SUPPORTERS SAY:** CSHB 626 would ensure that voting was a right reserved only for U.S. citizens as established by the U.S. and Texas Constitutions. The bill would require that a voter registration application include a certified copy of a document providing proof that the applicant was a U.S. citizen. In Texas, the foremost democratic right, the right to vote, is guarded somewhat indifferently. CSHB 626 would safeguard the right to vote from gaps in Texas election laws and procedures.

**Registration procedures.** Throughout Texas, applicants who check “yes” to the question of citizenship on voter registration applications are taken at their word. The Office of the Secretary of State, which oversees the administration of elections, conducts no formal verification of a voter registration applicant’s citizenship status. In a letter dated June 15, 2006, the Secretary of State’s Office wrote, “Texas relies on the applicant to provide accurate/truthful information on his or her voter registration application. To the extent that an applicant must sign the application verifying that he or she has met the qualifications to register (one of which is U.S. citizenship) and that he or she has provided accurate/truthful

information, the application is processed on those merits.” Such an admission is sufficient basis for legislative action to assure that only those eligible are allowed to register to vote.

Under the Help America Vote Act of 2002 (HAVA), the secretary of state, as of January 1, 2006, checks voter registration applications against driver’s license numbers, DPS-issued personal identification numbers, and Social Security numbers. While this procedure can serve to authenticate the name and address of an applicant, it does not prevent foreign nationals from registering to vote because both Texas driver’s licenses and Social Security numbers are available to non-citizens. A DPS driver’s license application provides a place to check citizenship status, but the agency does not verify the information.

An applicant for voter registration can register even without a Texas driver’s license or a social security number. The registration application states at the bottom that if a person does not have these forms of identification, the applicant will be required to present identification when the applicant votes in person or to enclose a copy of identification with a mail-in ballot. The application reads, “Identification includes: a current and valid ID; a copy of a current utility bill; bank statement; government check; paycheck; or other government document that shows your name and address.” Any person, including non-citizens, can pay for electric service, and anyone with a green card can earn a paycheck.

**Availability of documentation.** The forms of identification acceptable for voter registration are too readily available to protect the right to vote. Documents proving citizenship that CSHB 626 would require would give Texans more assurance of the integrity of the voter rolls. Most applicants already would have one form of the required documents available. Those few who did not have the required documents could secure them because election dates are public well in advance and people without these documents would have plenty of time to order and receive them.

**Registration irregularities.** In June 2006, the Harris County tax assessor-collector and voter registrar testified before the U.S. House Administration Committee that he identified at least 35 non-citizens who either applied for or received voter registration cards. Since 1992, the Harris County registrar has cancelled 3,742 registered voters for non-citizenship. Officials in Harris County discovered non-citizens on the voter rolls when the district clerk received returned jury summons from

people who were on the voter rolls but claimed not to be citizens and ineligible for jury service. Incidents such as these provide compelling reasons to address the problem of non-citizens' successfully registering to vote.

**Business reply mail.** Although the bill would strike a provision in current law for registration applications to be on pre-paid reply postcards, the bill would require the use of postage-paid reply business mail because one of the required documents would have to accompany the application. A standard form of reply mail should not pose a problem for those who choose to register by mail.

**National effort.** CSHB 626 would be consistent with efforts in other states to secure the registration and voting process. Even a few fraudulent votes can make a difference, and elections can be won and lost by a handful of votes. In November 2004, voters in Arizona approved a statewide ballot initiative, Proposition 200, requiring all applicants to register to prove their citizenship and to present identification at polling places. The National Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James Baker, recommended requiring a national voter ID card with a photograph and confirmation of U.S. citizenship.

OPPONENTS  
SAY:

CSHB 626 would be an overly onerous solution to a non-problem. Requiring a voter registration application to include documented proof of citizenship would confuse eligible voters, result in high fees in many cases to exercise the fundamental right to vote, and would contradict federal law.

The 2000 Census information for Texas recorded 1,985,316 non-citizens out of 20,851,820 people, or 9.5 percent. CSHB 626 would impose a substantial burden on the 90.5 percent of people living in the state who are citizens. Citizens in Texas would have to offer a certified copy of a birth certificate or a passport with a voter registration application, whether it was a new application, an application for a name or address change, or a replacement application. The secretary of state prescribes one application form, and the bill would make no distinctions as to the type of applicant.

**Acceptable documentation.** The bill would require an application to include a certified copy of one of three forms of documentation proving citizenship. Each would be costly and may not be readily available:

- ***A birth certificate*** or other document confirming birth, such as adoption papers. A certified copy of a Texas birth certificate through DSHS costs \$22 and can take three weeks for delivery. An expedited copy starts at \$35. Those born in other states would have to secure certified copies at varying costs. Those born overseas of U.S. parents would have to obtain first a Consular Report of Birth Abroad (FS-240), which costs \$30 with a \$65 service fee for an accompanying birth report, plus additional certification at \$30.
- ***U.S. citizenship papers.*** Citizenship papers come in many forms and costs. According to the U.S. Citizenship and Immigration Services (USCIS) Website, formerly Immigration and Naturalization Service (INS), applications for naturalization (N-400) cost \$300 and applications for a certificate of citizenship (N-600) are \$255. An application to replace a document (N-565), available under limited circumstances, is \$220. Certificates of naturalization and of citizenship have advisory language prohibiting duplication. Certified copies are available through USCIS, but only for use with foreign governments and embassies.
- ***An unexpired U.S. passport.*** The U.S. State Department issues passports through post offices, many courthouses, and other locations. A passport through the USPS costs \$67, plus a \$30 execution fee. A passport through some Texas district clerks' offices has the same application fee with varying execution fees. A passport can take two to four weeks by mail but can be processed three days after receipt of the application for \$60 more. Renewal costs \$67, and the applicant renewing must have a passport that is not damaged, have received it within the past 15 years, have been at least age 16 when it was issued, and have the same name as on the original passport or be able legally to document a name change. Passports cannot be copied legally, so a certified copy would not be available.

Estimates of the number of Americans with passports range between 15 and 25 percent, and many Americans do not have cause to get a certified copy of their birth certificate except for a passport application. Because of the expense involved in securing these documents for voter registration, the bill would amount to a poll tax, which is unconstitutional under the 24th Amendment to the U.S. Constitution.

**Registration by mail.** CSHB 626 would eliminate the postage-paid postcard for voter registration. Return of an application by postage-paid

reply business mail would not be practical. People applying to register would not be likely to mail originals of costly, personal documents like citizenship papers and passports, and the bill would not direct or provide funding for voter registrars to return documents. This essentially would eliminate voter registration by mail, including name changes, changes of address, or replacement registrations.

**Registration drives.** The bill would interfere with registration drives at places like grocery stores and candidates' rallies and would include no notification provisions about the change in requirements. None of the required documents would be items that people normally carry, so enlisting voters on site could become a thing of the past. Also, volunteer deputy registrars might not want responsibility for applicants' identifying documents. A person might take the required registration form and never mail it back after realizing the requirements for documentation, the cost if a document had to be secured, the time to obtain a document, and the uncertainty of getting the document back.

**Sensitivity of required documents.** Election Code, sec. 13.004 forbids a voter registrar from copying or recording a telephone number, a social security number, a Texas driver's license number, or a number of a DPS-issued personal identification card. In 2005, the 79th Legislature prohibited a registrar from posting any of that information with a date of birth on a Website. It would be inconsistent now to require citizens to turn over their identifying documents to complete a registration application. These documents would contain sensitive information, such as an applicant's mother's maiden name, and the bill would make no provision for protecting or returning them.

**Lack of evidence of non-citizens voting.** There is no reliable evidence of non-citizens intentionally voting illegally in Texas. The Secretary of State's Office does not have knowledge or information of court cases involving non-citizens voting. Local county district attorneys have not brought forth information about such prosecutions. The Attorney General's Office may have a pending trial involving a charge of a non-citizen voting.

In election contests, parties must prove by clear and convincing evidence that specific voters were ineligible and voted fraudulently. While there is evidence of ineligible felons voting illegally before the 75th Legislature in 1997 last changed those requirements, in the last 30 years no

incontrovertible evidence has arisen in Texas for a non-citizen voting, except one. In 2005, in the *Heflin v. Vo* election contest, a non-citizen, a Norwegian living in Katy, voted in the November 2004 election even though he was not a U.S. citizen. He said he did not recall registering, but an application on file in the Harris County registrar's office appeared to bear his signature with a check that he was not a citizen. The Harris County registrar acknowledged that his office erred in giving the non-citizen a voter card, and the vote was not counted. In the report and findings of the master in that case, the summary stated that the contestant had produced no evidence of intentional voter fraud affecting the final vote tally to his detriment. No amount of required documentation would eliminate clerical error, and CSHB 626 would not fix such a problem, however rare it may be.

**Penalties of perjury.** Voter registration applicants must mark their citizenship status under penalty of perjury and must sign a statement that they understand that giving false information to procure a voter registration is perjury and could result in jail time of up to 180 days, a fine up to \$2,000, or both. The applicant also could be subject to imprisonment of up to three years or a fine of \$250,000, or both under federal law. These penalties, plus having to make oath as to citizenship, would seem sufficient to keep non-citizens from voting illegally in Texas, and there is ample evidence that they have done so.

Evidence of an occasional non-citizen registering has surfaced, but usually due to an over-zealous volunteer registrar and an unaware applicant. The non-citizen ultimately is stopped short of voting illegally. Non-citizens generally are the least likely to vote because they want to remain "under the radar" if they are in the country illegally. A violation could lead to more charges and deportation.

**Carter-Baker Commission.** The National Commission on Federal Election Reform's recommendations include requiring that a federal voter ID card (with the voter's photograph) be issued free of charge. The recommendations would mandate every state to have an active recruitment program to locate people who were not registered and give them a voter identification card. The report stated that voter registration and address changes should be made easier, and this bill would directly contradict that goal.



**Violation of federal law.** The requirement for specific documentary proof of citizenship could potentially violate federal laws, including the 24th Amendment of the U.S. Constitution, the Voting Rights Act, and the National Voter Registration Act. Instead of pursuing an agenda of exclusion that should be left in the past, Texans should work to make voter registration easier and more accessible to encourage all citizens to participate in the electoral process.

NOTES:

The committee substitute differs from the introduced version by deleting provisions to:

- repeal Election Code, sec. 63.0101 on acceptable proof of identification for voting;
- require voters to present photo ID that matched a name on the secretary of state's statewide computerized voter registration list;
- accept a voter for provisional voting if the above identification requirement was not met; and
- allow a voter accepted for provisional voting to submit the acceptable photo identification to the voter registrar by personal delivery or mail for examination by the early voting ballot board not later than five days after the election, requiring the voter registrar's office to be open on a Saturday within the five-day period following the election; and directing the secretary of state to prescribe implementation procedures as necessary regarding proof of identification for certain provisional ballots.

HB 101 by Riddle, a related bill, which would require a voter registration application to include a copy of a document providing proof of citizenship, require a voter at a polling place to offer a voter registration certificate and one form of photo ID or two forms of ID without a picture, and allow a county commissioners court to authorize the county clerk or elections administrator to issue photo ID cards that could be used to accept voters, was heard by the Elections Committee on February 28.

HB 2869 by Corte would bring Texas driver's licenses and DPS-issued personal identification cards into compliance with the federal REAL ID Act of 2005. It was heard and left pending in the Defense Affairs and State-Federal Relations Committee on April 17. The bill would require an applicant for an original or renewal license or identification card who was not a U.S. citizen to present to DPS documentation issued by the USCIS

authorizing the person to be in this country, and DPS would have to verify before the person could be issued a driver's license or identification card.

HB 626 originally was set on the April 17 Major State Calendar and was recommitted to committee on April 16. The original vote in the Elections Committee to report HB 626 was 4 ayes, 3 nays (Anchia, Burnam, Farias).