

**Statement of Colorado Secretary of State Scott Gessler  
Before the  
Committee on House Administration  
U.S. House of Representatives**

**The 2010 election: A Look Back At What Went Right and Wrong  
March 31, 2011**

Chairman Lungren, Ranking Member Brady, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the results of a study my office conducted regarding the citizenship of registered voters in Colorado.

The results of the study indicate Colorado has a problem. Individuals who have presented proof of non-citizenship during transactions with the Colorado Department of Revenue are also listed on the voter rolls. I intend to share with you today the methodology we used in conducting the study and the proposed solution we are working to pass in the Colorado legislature. Though I can speak only for our situation in Colorado, I know the evidence from our study may raise questions that this committee may see fit to investigate further. Additionally, there may be actions that can be taken on the federal level that would help states with this issue.

The study, conducted by Department of State staff, compared Colorado's voter registration database with driver's license records to determine whether non-citizens are registered to vote in Colorado. Starting in August 2006, people seeking a Colorado driver's license have been required to show proof of lawful presence. Accordingly, in 2006 the Department of Revenue began recording the type of document that established an applicant's lawful presence in Colorado. The Department of State requested these records from the Department of Revenue this January and compared them to the voter rolls.

The comparison identified 11,805 individuals who (1) were non-citizens at the time they obtained a driver's license, and (2) are registered to vote. The study indicates we are nearly certain that 106 individuals are improperly registered to vote. And potentially many of the remaining 11,805 individuals are also improperly registered to vote. It is impossible to provide a precise number, however, because voter registration data are inconclusive.

When the proof of lawful presence policy became law, the Department of Revenue began recording the type of document that established legal residence. For U.S. citizens seeking a Colorado driver's license, required documentation includes a passport, birth certificate, social security card, driver's license from Colorado, or driver's license from another U.S. state or territory that requires lawful presence.

For non-U.S. citizens, proof of legal residence means a valid immigration document. This includes: Employment Authorization Document (EAD Form I-766) - commonly called a work permit; United States Permanent Resident Card (USCIS Form I-551) - commonly called a green card; INS Arrival/Departure Record (USCIC Form I-94) - a document completed at the time of entry to the U.S. by foreign citizens who are not permanent residents and who are being admitted into the U.S. for 90 days or less.

The Department of Revenue provided the Department of State all records indicating the document that a non-citizen presented to prove lawful presence. From August 2006 until mid-February 2011, 211,200 driver's licenses or ID cards were obtained using a non-citizen's lawful presence document.

The 211,200 non-citizens represent only a fraction of all driver's licenses, because the number (1) only includes new or updated licenses or identification cards after August of 2006, and (2) does not include applicants who provided another state driver's license.

The Department of State compared these records against the statewide voter registration database. After removing all duplicates, the comparison produced 11,805 unique registrants currently on the voter registration rolls. This represents 5.6% of the 211,200 non-citizens in the Department of Revenue database. As I will explain, the data are incomplete and this number does not prove that all 11,805 non-citizens were registered improperly.

When reviewing the 11,805 individuals who (1) were non-citizens at the time they obtained driver's licenses and (2) are registered to vote, the Department of State noted the voter registration date and drew certain inferences by comparing the date a person registered to vote with the date the person applied for or updated a driver's license.

First, 106 individuals presented the Department of Revenue with a non-citizen document after the date they registered to vote. It is nearly certain that these 106 non-citizens are improperly registered to vote, because they were registered on or before the day they applied for a license using a non-citizenship document.

Second, 11,699 individuals provided the Department of Revenue with a non-citizen document and later registered to vote. In each case, the voter registration date took place after the license application date. The Department of State does not currently have the data to determine with certainty the person's citizenship status at the time of registration. That said, two explanations likely cover the vast majority of cases: either (1) the person provided a non-citizen document to apply for a license but later became a citizen and legally registered to vote or (2) the person remained a non-citizen and registered to vote. Because the Department of State currently does not have access to a database that contains the date that non-citizens become naturalized citizens, it cannot determine the exact number of improper registrants.

The Department of State must nonetheless conclude that some of the 11,699 were registered to vote prior to obtaining U.S. citizenship for three reasons. First, most green card holders must wait three to five years before they may apply for citizenship, and the Department of Revenue data only date back to 2006. Based on this time range, it seems unlikely that all 10,048 green card holders from the analysis have become citizens since the time they registered.

Second, the other two types of non-citizen residents – the 1,338 holding an employment authorization document and the 419 holding an INS arrival/departure record – were not eligible to become citizens until they first converted to green card status. In short, the individuals who presented an Employment Authorization Document or an INS Arrival/Departure Record still had

a long road to citizenship, including at least three years as a green card holder. By contrast, green card holders were much more likely to have become citizens since 2006.

Third, the Department of State's own database shows that over the last two years 154 people initially registered to vote as non-citizens but then voluntarily withdrew their registrations. These instances of self-reporting likely provide a glimpse at a larger problem where non-citizens accidentally become registered through a mistake made by themselves or by someone else.

Of the 11,805 people who showed a non-citizen credential when they received their driver's licenses, 4,947 – or 41.9% -- voted in Colorado in the 2010 general election. By comparison, 55.5% of all registered voters in Colorado turned out to vote in the 2010 election.

As I noted previously, the Department of State does not know if a person became a citizen after obtaining a driver's license or identification card. Similarly, a non-citizen may have been improperly registered to vote, but may have later become a citizen and legally voted. For the reasons discussed above, however, it is likely that many of the 4,947 voters were not citizens when they cast their votes in 2010.

The above analysis draws tentative conclusions based on a small fraction of driver's license records that contain information about a person's citizenship status. There exist, however, other state and federal databases that contain relevant information related to citizenship status, including the Department of Homeland Security SAVE program, state and federal court jury recusal lists, and out-of-state driver's license records from other states that require proof of lawful presence like Colorado. As I noted in my introduction, we have proposed legislation at the state level to provide our office greater access to databases. We know we have a problem in Colorado, but we do not know how big the problem is.

In addition, the state legislation would allow our office to handle the issue administratively, rather than through criminal enforcement. The Colorado bill (HB1252) would allow the Secretary of State's office to send a letter to individuals when there is a discrepancy asking for proof of citizenship. In the case of the individuals in our study, if a person had obtained a driver's license as a non-citizen and then later become naturalized before registering to vote, the individual could simply respond with a copy of his or her naturalization papers and his or her voter registration would remain active. Under the bill, if our office does not receive a reply within 90 days, the registration is marked incomplete until the information is provided.

There are also steps that could be taken on the federal level that could assist states like Colorado with this issue. The GAO produced a study in 2005 entitled "Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists." The report noted federal juror recusal lists could be used to help states maintain accurate voter rolls. Federal court districts survey prospective jurors, including a question about U.S. citizenship. If these lists were made available to states, we could run a further analysis against the voter rolls to determine citizenship of registered voters.

My office sent a request for such information to the U.S. District Court for the District of Colorado. We recently received a response denying the request. The Clerk of the Court wrote in the response, "After thorough consideration of your request, the U.S. District Court has come to the conclusion that the Juror Qualification Questionnaire, when completed by a potential juror, is a document that is for the Court's use only." The GAO study noted "there is no Judicial Conference policy that instructs the courts to notify election officials when it is determined that a potential juror is not a U.S. citizen," though the study also noted that one of the 14 U.S. district courts contacted for the study, the Eastern District of Virginia, provided feedback to voter registration authorities if a prospective juror claimed not to be a U.S. citizen. The GAO recommended in the report "that the Administrative Office of the U.S. Courts determine the feasibility and steps necessary to implement a requirement that U.S. district court jury administrators provide notice to state election officials of potential jurors who identify themselves as non-citizens on their jury qualification questionnaire." This could possibly be an issue for this body to consider as well.

There are other federal databases that could assist state election officials in maintaining voter registration lists. The Department of Homeland Security Systematic Alien Verification for Entitlements, or SAVE, database, noted above, is one example. The Colorado Secretary of State's office already uses the SAVE system to verify non-citizen lawful presence documents for notary applicants. Our office has recently inquired with DHS about expanding our access to the database to assist our effort to maintain accurate voter registration lists. We have not yet received a response from DHS to this inquiry.

As with the sharing of any data between government entities, there would need to be safeguards in place to protect privacy and security of the information. We are willing to fulfill these obligations as we already do with other agencies and levels of government with whom we share information. As I noted above, our office already uses the SAVE program. The expanded access to federal databases and lists containing accurate citizenship information would provide an important tool for state officials to maintain accurate voter rolls.

In summary, after an initial investigation of Colorado's voter database, we know we have a problem with possible non-citizens on the voter rolls. We do not know how big the problem is and we believe we lack the tools to efficiently handle the problem. Proposed legislation in Colorado could address both aspects of the issue. But the federal government can also take steps to assist states in maintaining proper voter rolls, including access to databases and lists with citizenship information.

I thank you again for allowing me to address the committee today and for any help you can provide in the effort to maintain the highest integrity of our elections process.