



An Analysis the “Save Act” and Voting Executive Order

April 4, 2025

Introduction

Two initiatives that have the potential to gravely restrict voting are H.R. 22, the “Safeguard Voter Eligibility Act,” or SAVE Act,¹ and an executive order signed by President Trump on March 25.² This review attempts to show similarities and differences between the two documents. It is not a comprehensive analysis of either one, and it is not definitive.

The SAVE Act primarily focuses on requiring documentary proof of citizenship to register to vote. Secondly, it prescribes rules for voter list maintenance. The bill could be voted on next week (it might have been up this week but the House of Representatives closed.) If it does become law, it would suppress voting for millions of Americans, disproportionately affecting minorities, women, and members of the military. Virginians would not escape the law’s harsh terms.

The executive order (E.O.), interestingly entitled “Preserving and Protecting the Integrity of Elections,” covers election administration, not just voting, but (a) its directives are either covered by or conflict with existing law. such that the courts will likely deem it unlawful, and (b) it is mostly aspirational, especially where Virginia is concerned. The E.O. explicitly adds and removes language in the National Voter Registration Act although presidents cannot amend statutes. The executive order purports to assert presidential control over the U.S. Election Assistance Commission (EAC), a bipartisan, independent agency that the president does not control, ordering it to alter the federal mail voter registration form and impose new voting machine standards that cannot be met in a timely manner. Some of it

¹ <https://www.congress.gov/119/bills/hr22/BILLS-119hr22ih.pdf>

² <https://www.whitehouse.gov/presidential-actions/2025/03/preserving-and-protecting-the-integrity-of-american-elections/>

appears to be a backstop, in case the SAVE Act is defeated. Some of it is cheerleading—urging executive department heads to enforce certain existing laws. One respected, nonpartisan commentator called it “a malevolent press release.”³ If allowed to stand, this edict could suppress voting plus upend elections.

The bill and the executive order share a central tenet, preventing noncitizens from voting in federal elections, although the E.O. acknowledges that it is already illegal for noncitizens to vote in federal elections (18 U.S.C. § 1015(f); 18 U.S.C. § 611). Consequently, they both place restrictions on voter registration that could disenfranchise over 21 million Americans, or 9% of eligible voters, according to the [Brennan Center for Justice](#) and its research partners.

Requirement for Documentary Proof of Citizenship

The SAVE Act and the executive order have similar requirements for documentary proof of citizenship to register to vote but the SAVE Act’s are more defined and trickier.⁴ The SAVE Act allows several categories of documents to prove citizenship, including: (1) a Real ID (driver’s license) that indicates citizenship; (2) a valid U.S. Passport; (3) a military ID card, plus a military record of service showing the applicant’s place of birth was in the U.S.; (4) a valid federal, state, or tribal government-issued photo ID that shows the applicant’s place of birth was in the U.S., and 5) a valid federal-, state-, or tribal-issued photo ID (no mention of place of birth) *plus* one of five documents proving citizenship, such as a birth certificate or naturalization certificate. The sixth option is not an option for Virginians. The bill does offer an alternative affidavit for those who lack documentary proof of citizenship but requires states to find a way to confirm the applicant’s citizenship.

Only one of the listed documents, a valid U.S. Passport, by itself proves citizenship. Most Real IDs, including Virginia’s, do not indicate citizenship. Nor does a military ID or military record of service. The government-issued ID probably does not indicate citizenship, meaning such an ID must be accompanied by a separate document that does. Furthermore, a couple of the optional documents require proof of birth in the U.S., which those documents do not include. According to the Brennan Center, half of eligible U.S. citizens do not have a passport.⁵

³ Brennan Center webinar, “Presidents Don’t Control Elections,” April 1, 2025.
<https://www.youtube.com/live/wOB6JcVRQTW>

⁴ It is unclear whether either the bill or the executive order would apply to North Dakota, which does not have voter registration.

⁵ <https://www.youtube.com/live/wOB6JcVRQTW>

The executive order tells the EAC to change its federal voter registration form to demand documentary proof of citizenship, although it is not as detailed or stringent as the SAVE Act's requirements. The EAC's voter registration form is an acceptable application form but Virginia has its own form, which is likely used much more widely in Virginia than the federal form. It is not clear whether the EAC would even make the changes presented in the E.O. unless or until a court ordered it to do so.

Under both the executive order and the SAVE Act, birth certificates alone do not constitute proof of citizenship. Under the bill, birth certificates are simply one of the documents allowed to accompany a government-issued photo ID. The same is true for naturalization papers. Under the E.O., birth certificates and naturalization documents are not mentioned at all but presumably would be included among the unspecified documents that could be used to prove citizenship

The SAVE Act imposes a draconian extra burden on anyone who registers to vote using the federal mail voter registration application prepared by the EAC: they must present their documents proving citizenship *in person* to election officials before registering.

Another major consideration is that women who have changed their surnames (most often when marrying) and who do not have passports or who married while their passports were still valid would likely be disenfranchised. This is true even if they are currently registered to vote. It is true if they move and need to update their registration. Their birth certificates—the one document that most can obtain—does not show their married names. Seventy-nine percent of women change their names when they marry. While many or most can get new driver's licenses, new passports, new Social Security cards, etc., reflecting their married names, the process is time-consuming, costly, and slow.

Purging Voter Lists

Both the SAVE Act and the executive order set federal rules for maintaining voter lists. Voter list maintenance has always been exclusively within the purview of the states. Fortunately, nearly all the prescribed rules are already embedded in the Code of Virginia. The legislation's rules, however, permit states to use not only accepted sources such as data from the Social Security Administration and the Systematic Alien Verification to Entitlements (also "SAVE"), but "[o]ther sources, including databases, which provide confirmation of United States citizenship status." This vague language leaves the door open to unofficial, even partisan or private sources.

The E.O. would direct the EAC to withhold federal funds from any state that does not comply with its rules. Significantly, the federal funds the EAC can distribute to the states are primarily funding under the Help America Vote Act (HAVA funds) and additional funds

provided in 2020 under the CAREs Act. All those funds have already been distributed. Virginia, like most other states, has spent 100% of them.⁶ Therefore, this threat is empty. On the other hand, one might ask why the federal government no longer helps fund elections.

As mentioned above, the E.O. instructs DHS and DOGE to review each state's publicly available voter lists. Since the publicly available lists do not include personal identifiers such as social security numbers, one might question the purpose and value of such inspection.

The SAVE Act includes provisions for prosecuting violations by voters who do not comply with the voter registration requirements. It also would penalize election officials who register people who do not produce documentary proof of citizenship, providing for both federal prosecution and a private right of action. This is a scare tactic.

Restrictions on Voting by Mail

The executive order dictates that states may not accept any ballots received by mail after Election Day. It further mandates that the EAC must withhold federal funds from any state that fails to comply. Because Virginia is not receiving funds from the EAC, that threat is, again, empty. What the Attorney General would or could do is unstated but requiring all mail ballots to arrive by Election Day would hit military voters stationed abroad, other overseas voters, rural voters, and the elderly the hardest. This would violate the "time, place, and manner" choices left to the states in Art I, Sec. 4 and Art. II, Sec. 1 of the U.S. Constitution.

Voting Machine Standards

The EAC sets voluntary voting system guidelines (VVSG) and certifies voting machines at federal government laboratories. The states may choose to follow those guidelines. Virginia does but also sets its own higher standards. The E.O. orders the EAC to amend the new VVSG 2.0 guidelines (an amendment that does not affect Virginia) and rescind the old VVSG1.0 guidelines. The problem is that all our voting machines have been certified to meet the prior guidelines and the "migration" to the new guidelines nationwide is just beginning. The EAC's current timeline anticipates that voting machines meeting the VVSG

⁶ https://www.eac.gov/sites/default/files/2024-06/EAC_Report_on_State_Expenditures_of_HAVA_Funds_2023.pdf

2.0 standards will be in “full scale, nationwide deployment and use in elections” in 2029 and thereafter.⁷

Were it to be allowed by the courts, the requirement to use only tabulators meeting the VVSG 2.0 standard would be impossible for any state to meet. That would require hand-counting ballots. One state’s top election official, a politician, says it is an effort to cancel elections.⁸

Conclusions

If the SAVE Act passes, it would disenfranchise millions of Americans. While experts consider the executive order to be toothless, at a minimum it promotes conspiratorial thinking about elections.⁹

⁷ Presentation by EAC Chair Donald Palmer, Virginia Electoral Board Association Annual Meeting, March 25, 2025.

⁸ Arizona Secretary of State Adrian Fontes. YouTube, AZPBS, March 27, 2025.

⁹ Brennan Center webinar.