

PRESIDENT TRUMP'S EXECUTIVE ORDER CREATING A CITIZENSHIP DATABASE—AND ITS POTENTIAL VERY POSITIVE EFFECT ON THE NEW MEXICO STATEWIDE VOTER FILE

[The 8th in a Series of Articles about Changes in the New Mexico Election Code]

President Trump announced yesterday that, by Executive Order, he is:

ordering every department and agency in the federal government to provide the Department of Commerce with all requested records regarding the number of citizens and non-citizens in our country. They must furnish all legally accessible records in their possession immediately.

The President said:

“We will utilize these vast federal databases to gain a full, complete, and accurate count of the non-citizen population, including databases maintained by the Department of Homeland Security and the Social Security Administration.”

He also specifically mentioned the administration of elections, saying:

“This will greatly inform a wide array of public policy decisions...”

Elections administrators have long known that there is no available database which contains full information as to who is a citizen and who is not. There's no such thing at the national level or the state level.

The President's actions yesterday appear to be creating exactly such a database by lifting restrictions on data sharing between the Department of Homeland Security, the Social Security Administration, and the Department of Commerce, among other agencies, to allow for the creation of a database to generate an accurate count of the number of “citizens, non-citizens and illegal aliens” in the United States.

The President estimated that 90% of the information is contained in various federal databases.

NEW MEXICO ELECTION LAW AND OUR ABILITY to CROSS-MATCH WITH FEDERAL DATABASES

Prior to 2019, the New Mexico Election Code had a provision which allowed the Secretary of State to match information in the statewide voter file with information contained in the Motor Vehicle Division Database, as well as the database of the Social Security Administration.

But the provision was discretionary, not mandatory. This year, however, in House Bill 407, because of an amendment made by Republican House members, the “may” in paragraph C of that statute was changed to “shall.”

The statutes, 1-4-1.1 (B) and (C), now say:

[Note: CAPITALIZATION in the statutes has been added for emphasis only.]

B. The secretary of state MAY enter into a written agreement with an agency or political subdivision of this state or with a department of the federal government pursuant to which the state agency, political subdivision or federal department shall provide to the secretary of state information that is in the possession of the state agency, political subdivision or federal department and that the secretary of state deems necessary to maintain the statewide voter registration list.

C. The secretary of state SHALL enter into a written agreement with the secretary of taxation and revenue to match information in the database of the voter registration electronic management

system with information in the database of the motor vehicle division of the taxation and revenue department to the extent required TO ENABLE EACH OFFICIAL TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED ON APPLICATIONS FOR VOTER REGISTRATION. Upon the execution of the written agreement, the secretary of taxation and revenue SHALL enter into an agreement with the federal commissioner of social security pursuant to 42 U.S.C. Section 15483 (now 52 U.S.C. Section 21083), FOR THE PURPOSE OF VERIFYING APPLICABLE INFORMATION.

THE SIGNIFICANCE OF THE EXECUTIVE ORDER.

Should the executive order survive all legal challenges and go into effect, the result—it would appear—would be that the Department of Commerce will be able to develop a database which would provide the states with a critical resource that would allow them to verify the information contained in voter registrations.

Perhaps the most significant value coming from this database would be that it would prevent non-citizens from registering to vote. Non-citizens would be prevented from doing so regardless of whether they are legally present in the country or unlawfully residing in the United States.

This would provide important protection for non-citizens. As pointed out in a previous article, it is the non-citizens themselves, rather than the unscrupulous registrars who sign them up, who suffer the consequences of unlawful registration—by being disqualified from seeking citizenship, or even facing deportation or criminal charges.

And non-citizens who become registered to vote have usually been misled or just flat-out lied to about whether or not they are eligible to vote.

Additionally, absolute accuracy is critical to the integrity of the voter file. The ability to have a single, thoroughly cross-matched database would provide each state with the kind of critical resource that has been missing for years. Such a resource has always been needed in order to assure the voting public that their state's voter file is a clean, honest, accurate reflection of eligible voters. At this time in our history, no state is truly able to say that.

REFERENCE TO THE SOCIAL SECURITY ADMINISTRATION IN THE EXECUTIVE ORDER

If the executive order survives all legal challenges, it appears that the resulting database may become available as files that are maintained by the Department of Commerce and the Social Security Administration. This is especially significant because of the reference to the Social Security Administration in the 2019 amendments added to the New Mexico Election Code.

Under those recent changes (again with amendments by House Republicans) New Mexico is REQUIRED to match the voter file against the Social Security Administration database for the purpose of verifying information, including citizenship, on the voter registration application. This would make a dramatic difference in the accuracy of our database, just as it would in the other 49 states as well.

Several articles ago, we referenced the list of unregistered voters at MVD, and its use by the Secretary of State to confirm voter information. We cautioned that that list must not be used in such a way that the information becomes public information as part of the public voter file. Such usage could contribute to fraud and identity theft. The Social Security Administration database, on the other hand, already contains those types of protections for individual privacy and should not be vulnerable to the same concerns.

However, adequate protections must be in place to protect ANY database of personally identifiable information of citizens and voter and ensure that the database is only used for legitimate purposes.