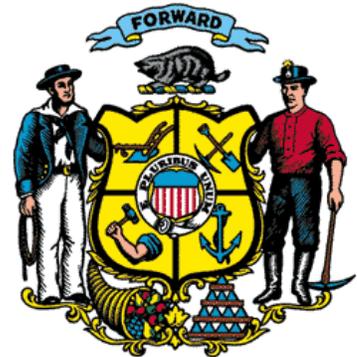


# State of Wisconsin Government Accountability Board



## Final Report of the SAVE Fact- Finding Team:



## Recommendations for the Use of the Systematic Alien Verification for Entitlements (SAVE) Program in Wisconsin



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December 11, 2012

## Executive Summary

The SAVE Fact-Finding Team has thoroughly researched the Systematic Alien Verification for Entitlements (SAVE) Program maintained by the United States Department of Homeland Security (USDHS), U.S. Citizenship and Immigration Services (USCIS). This Report provides the results of this research, as well as recommendations for how the SAVE Program could be used in Wisconsin for the purpose of voter registration list maintenance. Costs are also provided to help anticipate the financial impact of such use. The ultimate decision on whether and how Wisconsin would use the SAVE Program is a policy determination to be made by the Wisconsin Legislature.

### Information about the SAVE Program

- The SAVE Program is essentially a search engine that gives users a single portal to check legal presence and citizenship information stored in 19 different federal databases that track this information.
- To search in the SAVE Program, you must have a person's Alien Verification Number (AVN). Searching by name or other data elements is not possible.
- The SAVE program allows for searching for one AVN at a time (i.e., person by person) on the SAVE website.
- USDHS charges \$0.50 per search through SAVE. The SAVE Program offers three levels of search, depending on the availability and timeliness of the available data.
- Any agency using SAVE must enter into a Memorandum of Agreement (MOA) with USDHS requiring certain privacy protections, notices, appeal procedures and oversight by USDHS.

### Other States Use of SAVE

- Nine states have used or plan to use SAVE to verify citizenship of voters:
  - Colorado, Florida, and five counties in Arizona have used SAVE.
  - Georgia, Iowa, North Carolina, Ohio, Texas, and Virginia are in the process of gaining access to SAVE.
- Most states match voter records with motor vehicle records before using SAVE in order to identify voters who used non-citizenship documents when they obtained their driver license/state ID, and to gather AVNs for those voters to enable the SAVE search.
- Colorado and Florida each identified fewer than 3,000 voters for whom they could complete SAVE searches after a one-time comparison of voter records and motor vehicle records. After the SAVE search, fewer than 200 voters were identified as non-citizens.

### Recommendations for Potential Use of SAVE in Wisconsin

- If Wisconsin were to use SAVE, G.A.B. staff recommends that all voter records first be matched with Wisconsin Department of Transportation, Division of Motor Vehicles (DMV) records to

identify voters who used non-citizen documents to obtain their driver license/state ID, and to obtain AVNs for those voters.

- A one-time “bulk comparison” would be done with DMV records to identify any currently registered voters who may not be citizens.
- The Help America Vote Act of 2002 (HAVA) requires the G.A.B. to compare voter registration records to DMV records in order to verify name, date of birth and the driver license/state ID number of each voter. G.A.B. staff recommends expansion of the existing HAVA Check to incorporate citizenship information.
- G.A.B. staff would perform individual SAVE searches on each voter with an AVN identified in the HAVA/Citizenship check done with DMV.
- Voters identified as potential non-citizens in SAVE would be sent a notification letter by G.A.B. staff giving them the opportunity to provide documentation proving citizenship, confirm non-citizenship and voluntarily withdraw their voter registration, or request an administrative hearing.
- Administrative hearings would be conducted in Madison by the G.A.B., with an option to participate by phone for voters who cannot appear in person. A determination would be made at the hearing based on evidence and testimony offered.
- Voters would be able to appeal the determination of the administrative hearing to the Wisconsin Circuit Court.
- Voters determined to be non-citizens after exhausting any appeals would be marked inactive in the Statewide Voter Registration System (SVRS) and would not be eligible to vote until citizenship is established and the voter re-registers.
- Voters inactivated as non-citizens would be referred to the District Attorney for the county in which the voter registered for investigation of possible voter registration fraud.

#### Changes Required to Accommodate SAVE

- Legislation is necessary to authorize the use of SAVE, additional matching with DMV records, privacy protections and notice requirements, and to accommodate the recommended processes.
- SAVE searches would require technology changes to G.A.B. and DMV systems to facilitate the additional matching and data requirements.

#### Costs for Using SAVE

The estimated total cost of using SAVE for the G.A.B. (based on the recommendations in this report) is **\$1.19 million**. This includes **\$544,096.01** for start-up costs and **\$642,176.29** for ongoing costs for the first five years of operation. This does not include any potential costs for county or municipal clerks, DMV, or any other entities potentially involved in this process.

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- A. Letter from State Senator Mary Lazich to Kevin Kennedy on July 17, 2012
- B. Letter from Kevin Kennedy to Senator Lazich on July 19, 2012
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- D. List of Federal Databases Searchable Through SAVE
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## **Final Report of the SAVE Fact-Finding Team: Recommendations for the Use of SAVE in Wisconsin**

Prepared December 11, 2012

### **Background**

In June of 2012, Government Accountability Board (G.A.B.) legal staff began monitoring an initiative in Florida to remove the voter records of alleged non-citizens from their voter registration list. As part of their process, Florida sought access to the federal Systematic Alien Verification for Entitlements (SAVE) program maintained by the United States Department of Homeland Security (USDHS), U.S. Citizenship and Immigration Services (USCIS). The SAVE Program contains names of U.S. residents who are not necessarily U.S. citizens. On July 14, 2012, Florida announced it had received a commitment from Homeland Security that it would be able to access the SAVE Program.

On July 17, 2012, The Honorable Mary Lazich, State Senator of Senate District 28 asked Government Accountability Board Director and General Counsel Kevin Kennedy to compare data from the SAVE Program with voter records in the Statewide Voter Registration System (SVRS) in order to “promote greater election integrity”<sup>1</sup>.

Director Kennedy responded to Senator Lazich on July 19, 2012 indicating that G.A.B. staff would explore the viability of using SAVE in conjunction with SVRS. Director Kennedy further advised that it would be necessary to get more information about the content and structure of the SAVE Program and any conditions on its availability. Any matching procedures would require development of criteria and protocols. Technical development work would need to be done to facilitate the electronic comparisons of the data and the on-going work required to track the process. It would also be necessary to review any statutory limits on G.A.B.’s authority to implement the use of SAVE. Director Kennedy stated, “This will take time and money, both of which are in short supply at this point. However, we will proceed with gathering the requisite information to evaluate the feasibility and the practicality of using SAVE information in conjunction with SVRS.”<sup>2</sup>

On July 24, 2012, Nathaniel E. Robinson, G.A.B. Elections Division Administrator, created the SAVE Fact-Finding Team and charged it with the task of conducting a thorough fact-finding review of the SAVE Program and determining what Wisconsin would need to consider for comparing SAVE data with voter records stored in SVRS<sup>3</sup>. The team was specifically asked to provide three reports to G.A.B. management – the first preliminary report by September 14, the

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<sup>1</sup> Letter to Kevin Kennedy from State Senator Mary Lazich, dated July 17, 2012. Attached as Appendix A

<sup>2</sup> Letter to State Senator Mary Lazich from Kevin Kennedy, dated July 19, 2012. Attached as Appendix B

<sup>3</sup> SAVE Fact-Finding Team Charge Statement, dated July 24, 2012. Attached as Appendix C

second preliminary report by November 2, and the final report by December 7. This is the Final Report.

The letters between Senator Lazich and Kevin Kennedy, as well as the SAVE Fact-Finding Team Charge Statement are attached to this report as appendices.

### **SAVE Fact-Finding Team**

A cross-functional approach was used in establishing the SAVE Fact-Finding team. Each team member was selected based on the expertise and value they could bring to the data-gathering and fact-finding process. Team members are:

- Sarah Whitt, SVRS Functional Lead (Team Leader)
- David Grassl, IT Development Team Director
- Ann Oberle, UAT Lead Tester
- Katie Mueller, SVRS Specialist
- Colleen Adams, SVRS Specialist
- Brian Bell, Elections Data Manager
- Reid Magney, Public Information Officer
- Shane Falk, Staff Counsel

Director Kennedy provides overall policy direction for the SAVE fact-finding task. Elections Division Administrator Nat Robinson and Elections Supervisor Ross Hein provide oversight responsibilities and guidance.

### **Overview of SAVE Program**

The Systematic Alien Verification for Entitlements (SAVE) is a search application managed by the United States Department of Homeland Security (USDHS), U.S. Citizenship and Immigration Services (USCIS). The system provides users with a single portal that can be used to search approximately 19 different federal databases that contain information on immigration status. The list of databases that can be searched through SAVE is attached to this report as Appendix D.

SAVE is primarily used in determining an applicant's immigration status and thereby ensuring that only entitled applicants received federal, state, or local public benefits and licenses. However, several states have recently begun using SAVE as a tool to help verify U.S. citizenship relative to voter registration and/or voter registration list maintenance.

The SAVE Program can verify:

- Immigrant Status
- Nonimmigrant Status
- U.S. Citizenship for Naturalized Citizens
- U.S. Citizenship for Derived Citizens.

SAVE only provides citizenship information for people under the jurisdiction of USCIS (i.e. only people who have been issued a document that is tracked in one of the 19 federal databases accessible through SAVE). It does not include information on natural born U.S. Citizens who

do not have documents relative to immigration. It also does not include records of undocumented individuals who may be in the United States illegally.

Searching SAVE requires using an Alien Verification Number (AVN) issued to that person. While infrequent, it is possible for a person to be issued more than one AVN, or for multiple people to be issued the same AVN.

Performing a SAVE search of an individual's AVN returns a person's legal status, not necessarily an indication of citizenship. Statuses include categories such as "Lawful Permanent Resident," or "Citizen." If the status is "Citizen," that can be used reliably to determine that the person is a U.S. citizen. However, if a non-citizen status is returned, that does not necessarily mean the person is not a U.S. citizen. For this reason, USDHS recommends that secondary checks be performed if someone is using SAVE to validate citizenship.

#### How SAVE Searches are Performed

Most agencies that perform SAVE searches enter each AVN into a web-based search screen, and review results on-screen. USDHS also offers a paper-based SAVE search to those without internet access. This method takes longer to process.

A real-time electronic search could also be built to access SAVE via web services, but this is not commonly done at this time. The real-time electronic search also processes individually for each person, rather than through a batch process. The cost and development of this type of web service would be borne entirely by the agency and not by USDHS.

#### How SAVE Gets Updated

When a person's legal presence status changes, it may take up to two to three weeks to update in SAVE. SAVE is not a database; it is a verification information system (i.e. search engine) that obtains information from other databases. The accuracy of SAVE is wholly dependent upon how up to date the 19 databases are. Once the applicable source database is updated with a status change, it will appear in SAVE.

#### SAVE Levels and Pricing Structure

SAVE offers three search levels, each of which cost \$0.50 per search. Billing is done on a monthly basis for all SAVE searches performed during that monthly billing period.

- The first level search normally returns a result within three to five seconds and costs \$0.50 per search.
- If the first level search is inconclusive, additional information would be requested and a second search would be performed for an additional \$0.50 per search. Second level searches normally take three to five working days.
- If the second level search is inconclusive, the agency can perform a third level search for an additional \$0.50 per search. The agency may need to provide copies of an applicant's

documents in order to complete the third level search. Third level searches normally take 10-20 working days.

### Gaining Access to SAVE: General

SAVE is available to any agency that meets the eligibility criteria:

- If the agency is a federal, state or local government agency or licensing bureau; AND
- The agency provides a public benefit, license or activity authorized by law for which the verification of immigration status is appropriate.

Agencies that wish to use SAVE must request access from USDHS. The agency must enter into a Memorandum of Agreement (MOA) with USDHS regarding SAVE usage.

The primary purpose of the MOA is non-disclosure of protected information due to limitations set by the Federal Privacy Act. All MOAs include the privacy protections, so any participating agency agrees contractually to comply with the Federal Privacy Act. All MOAs require the requesting agency to agree to obtain prior approval from SAVE for use of standardized correspondence to request that an applicant provide a Naturalization Certificate or Certificate of Citizenship, and to inform them of their options to appeal and/or correct the data obtained through SAVE. All MOAs include notice that any person could be subject to criminal penalties for obtaining information from SAVE under false pretenses or for any purpose other than what is specifically provided for in the MOA.

The MOA can be modified to accommodate a state's unique circumstances. The more unique the MOA, the more time it may take to finalize it. Adopting an MOA that is as close to MOAs approved for other agencies is the best way to limit the length of time for approval, but it is difficult to use a uniform MOA because each State or agency has different laws and some wish to use SAVE in different ways.

The process for obtaining access to SAVE includes the following steps:

1. Submit an application to USDHS, which is vetted for detailed search and validation procedures, dispute processes, necessary enabling legislation or rules including privacy protections, etc.
2. USDHS personnel may ask questions of the applicant agency to better comprehend how the agency intends to use SAVE and whether the agency's processes and procedures, along with state statutes and administrative rules, sufficiently address approved usage of SAVE.
3. Once USDHS personnel are satisfied that the agency has answered all questions adequately and made any necessary revisions to the application or processes, the agency's application is reviewed by USCIS Counsel, who may also have questions for the applicant agency.
4. Once USCIS Counsel is satisfied that the agency has satisfactorily answered all questions and made any necessary revisions to the application or processes, the agency's

application is elevated to USDHS Counsel, who may also have questions for the applicant agency.

5. Previously, U.S. Department of Justice conducted an additional review of the MOA; however, this may no longer be required now that USDHS personnel, USCIS Counsel, and Department (USDHS) Counsel are getting more comfortable with these MOAs and the use of SAVE for voter registration and list maintenance related purposes.
6. Execute the MOA and complete required SAVE training. Thereafter and assuming all other prerequisites are complete, the State may use SAVE.

#### Gaining Access to SAVE: Voter Registration and Voter Registration List Maintenance

In 2011 and 2012, several state elections agencies contacted the USDHS requesting access to SAVE for the purposes of citizenship verification for voter registration and/or voter registration list maintenance. These requests received much public attention after the Florida Secretary of State sued USDHS in June 2012, seeking access to SAVE to verify citizenship of suspected noncitizens on Florida's voter registration list.<sup>4</sup> The lawsuit settled in the form of the entry of an MOA between Florida and USDHS in August 2012.

In addition to the MOA provisions and process explained immediately above, USDHS requires additional MOA provisions specific to states requesting access to SAVE for the purposes of citizenship verification for voter registration and/or voter registration list maintenance. USDHS prescribes additional citizenship verification and appeal processes that must be used if SAVE is unable to verify the voter as a naturalized or derived citizen after conducting the second level verification in SAVE. The MOAs require the states to correspond with the voters and obtain proof of citizenship to complete the SAVE verification, with USDHS approval of this correspondence prior to its use. In addition, the MOAs require the states to provide written notice to voters that their citizenship could not be verified and the information necessary to contact USDHS, as well as a copy of a USCIS document entitled "FACT SHEET Information for Registrants: Verification of Citizenship Status and How to Obtain Your Document or Correct Your Record with USCIS." This Fact Sheet includes the following notice to voters:

"The voter registration agency in your state has submitted information to the SAVE Program for verification of your citizenship. Because the SAVE Program cannot confirm your citizenship status based upon information provided by the agency, you must be given an opportunity by the voter registration agency to provide the correct documentation or correct your records with USCIS and/or appeal the denial of your voter registration. Please note that there are a number of reasons why the SAVE Program may not be able to verify your citizenship, e.g., the SAVE Program can only verify naturalized or derived citizens, to the extent that a derived citizen received an official determination on citizenship by USCIS. The inability of the SAVE Program to verify your citizenship does not necessarily mean that you are not a citizen of the United States and are ineligible to vote."

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<sup>4</sup> In June 2012, the U.S. Department of Justice also sued the State of Florida and its Secretary of State for potential violations of the National Voter Registration Act arising out of Florida's program to identify and remove noncitizens from the Florida voter registration list. A U.S. Department of Justice motion for a temporary restraining order was denied on June 28, 2012, but this case is still pending.

The MOAs also require the state elections agency to provide all voters who are determined to be non-citizens based solely or in part on the SAVE response with the opportunity to use the states' existing process to appeal the denial of voting rights and the opportunity to contact USDHS to correct their records prior to a final decision by the agency regarding voter eligibility.

USDHS reviews these additional verification and appeal procedures during the agency's application process as provided above to ensure that the agency can comply with the terms of the MOA.

### **How Other State Elections Offices Use SAVE**

The SAVE Fact-Finding Team identified nine states that have performed SAVE searches, are in the process of applying for access, or are considering using the SAVE Program. Seven states provided significant information regarding the SAVE Program and how it could (or should not be) used relative to voter registration. Georgia and Arizona were contacted but not available for interview.

#### **Background**

Florida, Colorado, and five counties in Arizona have already used SAVE. Colorado and Florida used the SAVE Program on their statewide voter registration list as a one-time comparison (thus far). Five counties in Arizona use the SAVE Program on their voter registration list to verify citizenship at the time of registration, but Arizona statutes specifically require proof of citizenship in order to register to vote.

Virginia, North Carolina, Iowa, and Georgia are near completion of their MOAs with USDHS but have not yet used SAVE. As of late December 2012, Virginia and North Carolina<sup>5</sup> are expected to have access to SAVE, but due to system or statutory limitations, might not be using the system. According to USDHS, Iowa was expected to have finalized their MOA; however, we have learned that Iowa's implementation of citizenship verification of their voter registration list with SAVE has been enjoined by an Iowa Court. The Iowa Secretary of State is pursuing legislative and administrative rule changes to allow for SAVE use. The status of Georgia is unknown.

Ohio and Texas are in the exploratory stages of an MOA with USDHS. Ohio is in negotiations with USDHS on an MOA. Texas has sent a request to USDHS to use SAVE, but have reported that they have not heard back from USDHS.

#### **Methodologies for Using SAVE for Voter Registration Related Purposes**

While each state is planning on using the SAVE Program in slightly different ways, three general methods have been employed: voter registration list maintenance, on a complaint basis, or at the point of registration.

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<sup>5</sup> While North Carolina is a preclearance state under Section 5 of the Voting Rights Act, North Carolina staff told the G.A.B using SAVE was not subject to preclearance, although they informed the U.S. Department of Justice they were using SAVE.

Colorado and Florida used the voter registration list maintenance approach. Using their Department of Transportation or Department of Revenue records, these states identified registered voters that used non-citizen documentation to obtain driver licenses or state identification cards. These states then identified people that had AVNs, and searched for each AVN through the SAVE Program<sup>6</sup>. The results of the citizenship review process for Colorado and Florida are as follows:

<b>Citizenship Review Process Results</b>		
<b>Number of People</b>	<b>Florida</b>	<b>Colorado</b>
<b>Non-citizen Information in Driver License Records</b>	180,000	3,900
<b>Submitted to SAVE</b>	2,600	1,400
<b>Recommended for Removal from Voter List</b>	106	151

North Carolina also plans to use the list maintenance approach, but in a slightly different way than Colorado and Florida. This state is incorporating the SAVE search as a “lawful presence” check into their current HAVA Check with DMV. Instead of just verifying the name, date of birth, and driver license number, the HAVA check would also return an indication if the voter has lawful presence in the US but is not a citizen. If the HAVA Check came back with a non-citizen flag, the voter would still get registered. Approximately once a month (the exact timing has not been determined) the State of North Carolina would follow up on the flag and run a SAVE search on each AVN. North Carolina is working with their DMV to set up their process before they finalize their MOA with USDHS. They would likely have staff people keying each SAVE search rather than automating the process with their database.

The second method that some states propose to use is a complaint process, by which citizenship challenges and verification are considered. People would file a complaint against individual voters they believe to be non-citizens. The state would then use the SAVE Program to help determine if the voter is a citizen. Ohio and Texas are planning on using this method, but have not yet used the SAVE Program. Both are still developing criteria or policies on who can submit a complaint, what criteria a complaint would need to meet in order to submit the voter’s information to SAVE for verification of citizenship, and finally, whether any other verification beyond SAVE will be required prior to removing an voter from the voter registration list.

The third method involves performing a SAVE search at the point of registration, prior to approval of the application. Currently, five counties in Arizona use SAVE this way. Since staff was unable to interview representatives from these counties, only limited information is available regarding this method.

### Removing People from the Voter Registration List

Due to different statutory provisions and administrative rules among states, varying procedures are employed to use SAVE information to remove voters from voter registration lists. Florida

<sup>6</sup> Prior to searching in SAVE, Florida also removed people from the initial search list that they felt had inaccurate or outdated information.

and Colorado each follow separate processes for informing and removing people from voter registration lists that are identified as potential non-citizens in SAVE.

In Florida, the State runs the SAVE search and gives the names of voters that appear as non-U.S. citizens in SAVE to the counties in which the voters reside. The counties then send a letter to each voter, notifying them they have 30 days to present information that they are a U.S. citizen. If the individual is not able to produce evidence of his or her citizenship or after 30 days, the person is removed from the voter registration list<sup>7</sup>.

In Colorado, the Secretary of State's office runs the SAVE search. Colorado administrative rules state that individuals must be notified by the State and given 30 days to set up a hearing at the county of their residence, if they wish to challenge the non-citizen determination and remain on the voter registration list. Individuals can either present evidence of citizenship in the form of a Certificate of Naturalization, Certificate of Citizenship, or simply swear under oath that they are U.S. citizens. Such a certificate or sworn oath is sufficient for the voter to remain on the voter registration list.

In North Carolina, preliminary information suggests that the State Board of Elections would run the SAVE search. While the SAVE search would be conducted differently in North Carolina, the procedure to remove voters is similar. If a person is identified as a potential non-citizen, the State Board of Elections would send him or her a letter saying that USDHS and the North Carolina DMV have evidence the person is not a citizen. Voters who do not respond in 30 days would be removed from the voter registration list. North Carolina would accept naturalization or similar official documentation proving citizenship, but not a sworn affidavit.

#### Costs and Funding of SAVE Searches in Other States

The exact cost of using SAVE is difficult to determine. States have not determined the frequency of using SAVE searches, and are not tracking staff costs. Colorado said that it was not tracking costs of using SAVE and Florida did not volunteer any cost information.

Both Florida and Colorado said the biggest cost in terms of money and manpower was actually setting up the searches. Gathering driver license or state ID data, finding AVNs, determining the accuracy of the data, training and setting up staff to use SAVE, and determining who and how people on the voter registration list are identified as candidates for a SAVE search are the biggest costs in using SAVE for voter registration list maintenance.

Another issue in determining SAVE costs is that neither Florida nor Colorado have finalized how often they will run or use the SAVE Program. At the time GAB staff interviewed staff in Florida, the Florida Secretary of State did not know how often Florida will use SAVE, having only done one search that was completed in September 2012. Colorado had conducted one search and had not yet determined when they would use SAVE again, but thought they would use it on a monthly or quarterly basis. Costs for North Carolina and Virginia could not be determined since the system had not been used, and legislative or technological changes were needed for these states to use the SAVE database.

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<sup>7</sup> County compliance varies on this requirement.

Colorado and Florida conducted their searches via the SAVE user interface web application, which required manual data entry for each individual search. Pursuant to their MOAs with USDHS, both states are required to do up to two searches in SAVE. Florida is required to perform the first level SAVE search twice for any persons not identified as citizens. Colorado is required to conduct the second level SAVE search for anyone that was not identified in the first level SAVE search as a citizen. USDHS indicated that any future MOAs for agencies using SAVE relative to voter registration would likely require the second level search if the first level search is inconclusive.

Please refer to Appendix E for more detailed information on the research conducted with the other states using SAVE.

### **How Other Wisconsin Agencies Use SAVE**

Other Wisconsin state agencies currently use SAVE to verify legal presence of their customers, pursuant to their own business needs and legal requirements. G.A.B. staff identified the Department of Workforce Development (DWD) and the Department of Transportation, Division of Motor Vehicles (DMV) as two Wisconsin State Agencies currently using SAVE.

#### **Department of Workforce Development (DWD)**

The Wisconsin Department of Workforce Development (DWD) uses the SAVE Program as part of its Unemployment Insurance application process. DWD has been using SAVE (and its predecessor system) to determine an applicant's eligibility for unemployment insurance for approximately 10 years. DWD uses SAVE to determine if applicants for unemployment insurance were legally authorized to work in the United States at the time they were employed. DWD uses SAVE in the following ways:

- Applicants are only eligible for unemployment insurance benefits if they were legally authorized to work in the United States during their employment.
- Applicants who are not U.S. citizens must provide their Alien Verification number (AVN) at the time they apply for benefits.
- Unemployment Insurance staff hand-key the AVN into the SAVE look-up web portal to verify if they have work authorization.
- The SAVE Program provides an indication of whether or not the applicant have work authorization. Most verifications come back within a few seconds.
- Some searches require that additional information be provided. If so, a second level SAVE search is performed using the additional information and a result is provided within two to three days. (Normally the applicant needs to provide his or her Work Authorization Form to resolve the second level SAVE search.)
- In rare cases, a third level SAVE search may be required, which can take up to 30 days.

As previously noted, SAVE searches cost \$0.50 per individual search. If a second or third level search is required, an additional \$0.50 is charged per search. DWD spends approximately \$13,000 on SAVE searches annually. DWD has an MOA with USDHS that authorizes their use of SAVE. Federal law limits the information that DWD can share, and the MOA between DWD and USDHS is limited to searches related to unemployment benefit eligibility. The agreement only authorizes DWD to use SAVE for the purpose of unemployment benefit eligibility and cannot be utilized by any other State Agency wishing to use SAVE for the same or any other purpose. Each agency must enter into its own MOA with USDHS.

### Department of Transportation

The Wisconsin Department of Transportation, Division of Motor Vehicles (DMV) uses the SAVE Program to verify that applicants for a driver license or a state ID card have legal presence in the U.S. As of September 10, 2012, DMV estimates that it has **3,848,270** U.S. citizen customers on file with an active driver license/ state ID, which DMV refers to collectively as “products.”

For DMV customers that last obtained a product prior to April 1, 2007, the DMV has no legal presence information on file. As of September 10, 2012, DMV reported that it has about **734,673** customers with a driver license or state ID that have yet to self-certify legal status. They clarified that this is an estimate, as this number changes every day.

Beginning April 1, 2007, customers who apply for a DMV product are required to self-certify their legal status and the DMV record will contain an indicator of “U.S. Citizen”, “Permanent Resident” or “Temporary Visitor”. The applicant shows proof of legal presence in the United States, which is recorded in the DMV database. However, DMV confirmed that not all non-citizen records in the DMV database contain information regarding the proof of legal presence used (including the AVN). The product application forms ask applicants to indicate if they are a U.S. Citizen, Permanent or Conditional Permanent Resident, or Temporary Visitor. DMV provided the following statistics in September 2012 regarding these indicators:

- Approximately **86,908** people with a DMV product have an AVN on file (9,430 temporary visitors and 77,478 permanent residents)
- Approximately **79,506** people with a DMV product are permanent residents. Permanent residents account for approximately **2%** of total DMV products
- Approximately **39,619** are temporary visitors. Temporary visitors account for approximately **0.25%** of total DMV products

Applicants who indicate they are non-citizens must then provide DMV proof of legal presence in the U.S. DMV staff record the type of document used, as well as any identification numbers (such as the AVN). However, there is not always an AVN on file at DMV, as there are a variety of numbers documenting legal presence in the US (e.g., I-94 form, Visa, SEVIS, foreign passport, or document certification number). According to DMV, they can query SAVE with any of these numbers for second or third level searches. Under current DMV procedures, staff can perform a SAVE search if there are any questions regarding the paperwork submitted to demonstrate proof of legal presence. This is not done on a systematic

basis. Individual DMV clerks hand-key the AVN into the SAVE web portal, which verifies if the person has legal presence.

Under the federal REAL ID Act of 2005, all state motor vehicle agencies are required to search for all non-citizen applicants in SAVE. Wisconsin will implement this in 2013. DMV will perform SAVE searches automatically through an IT system maintained by the American Association of Motor Vehicle Authorities (AAMVA). AAMVA is creating a single technical hub for SAVE searches that state motor vehicle authorities across the country can access using their existing AAMVA connections (e.g. AAMVA is currently used for verification of social security numbers, as well as problem drivers from other states). DMV clerks who are processing applications simply need to key in the required information, and the information will be automatically sent to AAMVA, who connects to SAVE. The result will be sent back to the clerk within a few seconds. The costs of the new automated SAVE searches are not yet known, but the DMV costs to set up the system will be paid using federal funds provided to DMV to implement REAL ID.

If non-citizens become citizens while they have a product, they are not required to notify DMV until their product expires and they apply for a new one. Products for U.S. citizens and permanent residents expire after eight years. DMV will send non-citizen customers a notice via mail when their product expiration date is within 60 days. If the customer's legal stay in the U.S. has been extended, the customer must visit a DMV service center with his or her updated documentation to apply for an extension of the expired card. Failure to take action results in the card remaining expired.

For temporary visitors, the expiration date of their products corresponds to the time they are currently authorized to remain in the United States. From 2007 to 2012, temporary visitors had the word "Temporary" printed in red on their product. Beginning in mid-2012 when the products were redesigned, temporary visitors now have the word "Limited-Term" in black. Permanent residents do not have any legal status indicator on their product.

### **Preliminary Considerations for G.A.B. Use of SAVE**

Based on the information gathered in this report, there are several things that would need to be considered before moving forward with use of the SAVE Program:

- Access to DMV Data: DMV possesses the largest database of Wisconsin residents via DMV records. Similar to what other states have done, the most logical way to use SAVE is to first match voter registration records with DMV records to identify any voters who provided non-citizen documentation when they obtained their driver license or state ID. For those voters, DMV can also provide the Alien Verification Number (AVN) which is required for the SAVE searches. G.A.B. would need access to DMV data, including specific data elements such as the citizenship self-certification and AVN in order to use the SAVE Program. G.A.B. and the DMV would need to develop technical infrastructure to facilitate the match and exchange of information. G.A.B. and the DMV have no history of transferring high volumes of data for large scale batch matching of voter registration records. Current statutory fee waivers for G.A.B.'s use of DMV data would require expansion to include SAVE matching in order to be cost effective.

- Legal Considerations: Several legal considerations must be explored before any final recommendations can be made regarding SAVE. Some of these considerations include:
  - Do the federal Driver's Privacy Protection Act of 1994 and/or REALID Act of 2005 prevent DMV from sharing with G.A.B. the necessary information to conduct citizenship verification via SAVE searches, or are there specific exemptions from these federal laws that would permit DMV to share information with the G.A.B.?
  - Do any Wisconsin and/or federal statutes specifically authorize the G.A.B. to perform SAVE searches on voter registration records and inactivate voters on the registration list based upon the results of a SAVE search?
  - Do any Wisconsin and/or federal statutes specifically authorize the G.A.B. to match voter registration records with other Wisconsin agencies already using SAVE to conduct citizenship verifications, e.g., Department of Workforce Development, Department of Transportation upon full implementation of REAL ID in January 2013?
  - Do any Wisconsin and/or federal statutes specifically authorize the G.A.B. to match voter registration records with third parties that use SAVE to conduct citizenship verifications, i.e. American Association of Motor Vehicle Authorities (AAMVA) or the Electronic Registration Information Center (ERIC)?
  - Can federal funds from the Help America Vote Act of 2002 be used to pay for needed infrastructure to conduct SAVE searches and/or the searches themselves?
  - Under Wisconsin statutes, what confidentiality requirements apply to information obtained from the DMV, SAVE searches and results, as well as any other information related to citizenship verification processes?
  - Do any Wisconsin statutes and/or administrative rules currently prescribe a process and procedure for voters' notification of a citizenship issue, determination hearings and/or appeals, removal from the statewide voter registration list, referral to law enforcement authorities, and confidentiality treatment for each process?
  - What legislative or administrative changes are needed to implement SAVE searches in a way to meet the requirements of any MOA with USDHS?
  - What are the likely terms of any MOA with USDHS and also any MOA with DMV regarding SAVE searches and citizenship verification processes?
  
- Policies and Procedures: New policies and procedures would need to be established to ensure uniform and consistent treatment of all voters. Examples of questions that these policies and procedures would need to address include, but are not limited to:
  - Which voters are subjected to a SAVE search?
  - What is done in response to a SAVE search?

- How does a voter respond to the results of a SAVE search?
- What would be the roles and responsibilities for the state, county and municipal election officials?
- Agreement with USDHS: An MOA would need to be negotiated with USDHS in order to facilitate SAVE searches. This process appears to take varying amounts of time. G.A.B. may be required to establish the relevant policies and procedures, supported by statutes and rules as necessary, and provide them to USDHS prior to being given access to SAVE.
- Fiscal Considerations: Pursuing this initiative would have a fiscal impact on the G.A.B., DMV, and municipal and county clerks. Information Technology (IT) costs would be required to develop the necessary infrastructure to compare statewide voter registration records against statewide DMV records. IT costs would be required to develop the necessary infrastructure and to compare statewide voter registration records against the SAVE Program. Staff costs would be incurred to establish the policies and procedures, and to perform any required duties. Per-record costs would be incurred regularly for each SAVE search. A full budget would need to be developed for this project, and funding sources would need to be identified.
- Technical Considerations: Technical questions would need to be addressed, such as:
  - What data fields should be used to match records with DMV and SVRS?
  - How do you determine that two records are the same person?
  - How frequently would comparisons between DMV and SVRS take place?
  - Can that process be automated?
  - Can an electronic system be set up with the SAVE Program so that people are not required to hand-key SAVE searches?
  - What procedure is most cost effective?
- Local Impacts: Based on the information gather thus far, the local impact of SAVE searches appears to be minimal, as most of the work would be centrally performed to identify voters to be verified and to perform the searches. However, if voters are identified as potentially being non-citizens, local election officials could play a direct role with voters in resolving the citizenship issue. The full local impact of SAVE searches would need to be explored and defined.

### **Recommendations**

G.A.B. staff prepared the following recommendations for the potential use of SAVE. The SAVE Fact-Finding Team believes that these recommendations establish a manner by which SAVE could be effectively used to help determine citizenship of certain voters, without unduly penalizing voters who are in fact citizens. However, given the legal considerations and costs,

the ultimate decision on whether and how Wisconsin would use the SAVE Program is a policy determination to be made by the Wisconsin Legislature.

### **Process Recommendations**

The SAVE Fact-Finding Team utilized a “best practices” approach to develop process recommendations for Wisconsin’s potential use of the SAVE Program. This included reviewing federal and Wisconsin statutes and administrative rules, as well as the experiences of other states relative to SAVE to identify what would work best for Wisconsin.

#### Who Would Perform SAVE Searches

The State would be responsible for doing SAVE searches. Centralizing the process ensures uniform handling of all voters. It is also unlikely that an agreement could be reached with USDHS to allow Wisconsin’s 1,923 local election officials access to SAVE. Local use of SAVE would also put significant burdens on G.A.B. staff to monitor access to SAVE and ensure strict adherence to all USDHS requirements.

#### Method of SAVE Searches

G.A.B. staff would perform SAVE searches as a voter registration list maintenance function. G.A.B. staff would conduct SAVE searches on voters after they register. This is similar to the other voter data quality checks performed today under the Help America Vote Act of 2002 (HAVA), such as death, felon and duplicate voter matches, and HAVA Checks with DMV.

#### Initial Citizenship Check

The first step of the recommended SAVE process is matching voter data with DMV records and gathering citizenship information. DMV has the largest database available of residents of Wisconsin, and contains legal presence information for all residents who obtained a driver license or state ID after April 1, 2007. This makes it the most reliable source available to gather legal presence information, including the AVNs required to perform the SAVE searches. G.A.B. also has existing agreements and technology in place with DMV for HAVA compliance. These agreements and technology would require expansion to allow for DMV to provide customer information to G.A.B. staff as part of this process.

#### Add Citizenship Check to HAVA Check

G.A.B. staff recommends expansion of the existing HAVA Check that is currently done for all voters when they register to vote to include legal presence information. Today the HAVA Check verifies the name, date of birth, and driver license/state ID number that the voter provides against DMV records.

If the HAVA Check results in a complete match, DMV could then verify citizenship information:

- If the voter provided a citizenship document to obtain his or her driver license or state ID (such as a birth certificate, or proof of US Citizenship) no other follow up would be required.

- If the DMV database shows that the document used to obtain the driver license/state ID was a non-citizen document (such as a green card, visa, or other proof of legal presence document), the HAVA Check would return the type of document provided when the voter obtained his or her driver license/state ID, as well as the AVN, if it is present in the DMV database.

If the HAVA Check results in a partial match or no match found, it is not recommended that further citizenship information be gathered from DMV, as it is unclear if the voter and the driver are in fact the same person. These voters would be handled under the normal HAVA Check non match process that exists today:

- The clerk contacts the voter to verify his or her information.
- Once the information is verified and updated, SVRS performs another HAVA Check. If the subsequent HAVA Check results in a complete match, SVRS would then receive citizenship information.
- If the non-match is due to incorrect information in the DMV database, the voter is encouraged to contact DMV to have his or her data corrected, and then to contact the clerk to perform another HAVA Check. If the subsequent HAVA Check results in a complete match, SVRS would then receive citizenship information.

In order to increase the number of HAVA Check non-matches that can be resolved by clerks, G.A.B. staff would also work with DMV to improve the existing HAVA Check process by gathering additional information from DMV (such as name and date of birth as they appear in DMV) to assist clerks in resolving non-matches. Resolving non-matches not only improves the data quality in the voter registration system, but also increases the ability to perform SAVE searches. The HAVA Check is automatically performed any time a voter's identifying information is updated. The voter remains registered, and G.A.B. staff would follow up on any voters whose HAVA Check provides potential non-citizen information.

#### Bulk Comparison for Existing Voters

In order to address voters who register prior to citizenship information being incorporated into the HAVA Check, G.A.B. staff would conduct a one-time bulk comparison between DMV and voter records in SVRS to identify any existing voters who used non-citizen documents to obtain their driver license/state ID. These voters would go through a process similar to the HAVA Check where if the name, date of birth, and driver license/ID number match DMV records, information regarding the type of document used to obtain the license and the AVN would be provided to the G.A.B to perform SAVE searches on those voters.

#### First Level SAVE Search

G.A.B. staff would run reports on a regular basis (recommended monthly) to identify voters who are marked from the HAVA Check as having provided non-citizen documents when obtaining their driver license/state ID. G.A.B. staff would then perform individual SAVE look-ups using the web-based search portal provided by USDHS. G.A.B. staff would follow similar procedures for voters identified in the initial bulk comparison for existing voters.

### Second Level SAVE Search

USDHS may require a second level search if the first level search results are inconclusive. The second level search, as described earlier in this report, is more thorough and may take up to three business days. It is also good business practice to ensure obtaining the most accurate information. Therefore, G.A.B. staff would likely proceed with the second level SAVE search when required.

### Third Level SAVE Search

In some cases, the second level search may still be inconclusive requiring a third level search in order to reach a definitive result. As described earlier in this report, the third level search takes up to a month, and may require submission of the person's documents themselves. G.A.B. staff would not have copies of the documents themselves, and USDHS does not require a third level search as a provision of the MOA. Conducting third level searches and collecting the necessary documentation requires considerably more time, effort, and cost than first or second level searches, while likely providing minimal additional certainty to an individual's legal presence status. Therefore, G.A.B. staff does not recommend performing third level SAVE searches at this time.

DMV would be required to store electronic versions of the documents when they reach full compliance with the Real ID Act, so this could be explored as a future option. No other states are currently performing the third level SAVE search as part of their SAVE process.

### Voter Notification Process

If the first level or second level SAVE searches indicate a lack of citizenship status, G.A.B. staff would notify the voter via a first class letter. The letter would notify the voter that there is information indicating that they may not be a U.S. citizen, and would ask them to respond to the letter within 30 days.

Pursuant to the MOA with USDHS, the notification letter must include specific language regarding the SAVE Program, the process to obtain replacement documents to prove citizenship, information on how to schedule an interview with USDHS to correct his or her citizenship records, and instructions on how to correct citizenship records in writing.

The letter would give the voter three options regarding his or her voter registration:

- Provide proof of citizenship (via a citizenship document or sworn affidavit).
- Voluntarily indicate that they are not a U.S. citizen and request to have his or her voter registration canceled.
- Request a hearing.

If the voter provides proof of citizenship, G.A.B. staff would review the documents and update the voter's record. If the voter voluntarily indicates that they are not a citizen, his or her voter registration would be inactivated and their information would be referred to the appropriate

District Attorney for investigation. If the voter requests a hearing, or if the voter does not respond to the letter, a hearing would be scheduled for the voter.

### Handling Undeliverable Mailings

If the SAVE letter is returned to the G.A.B. as undeliverable, a hearing would not be scheduled. Instead, G.A.B. staff would forward that information to the municipal clerk so they could follow the standard undeliverable mailing process per 6.50(3) of the Wisconsin Statutes:

- The municipal clerk would send the voter a 30-day notice letter informing them that they have reliable information that the voter no longer resides at that address.
- If the voter does not respond to the 30-day notice letter, or if that letter is also returned as undeliverable, the clerk inactivates the voter record due to undeliverable mailings.
- If the voter does respond, the clerk would notify G.A.B. staff so that the SAVE notification letter can be re-sent.

### Hearing Process

Administrative hearings would be conducted in-person in Madison at the G.A.B. office. If the voter is unable to travel or attend in person, they may request and may be granted permission to participate by telephone at his or her municipal clerk's office. The municipal clerk would need to provide telephone access to the hearing, swear in the voter, and collect and provide any evidentiary documents to the G.A.B.

G.A.B. staff recommends that these administrative hearings be held quarterly, with voters scheduled for consecutive time-slots on the designated hearing day. The initial bulk comparison for existing voters may require several days of administrative hearings to accommodate the volume of identified voters. G.A.B. staff would notify the voters of the date, time, and location of his or her administrative hearing via first class letter.

Based on the evidence and testimony provided at the administrative hearing, the voter's disposition would be determined:

- If the voter is determined to be a citizen, this information would be updated in the Statewide Voter Registration System (SVRS) and no further action would be required of the voter.
- If the voter is determined beyond a reasonable doubt to be a non-citizen, he or she would have the opportunity to appeal the decision. After the deadline for any appeals, the voter's record would be inactivated in SVRS and his or her information would be forwarded to the appropriate District Attorney for investigation of potential voter registration fraud.
- If the findings from the administrative hearing do not establish that a voter is a non-citizen beyond a reasonable doubt, the voter will remain registered and this information would be updated in SVRS and no further action would be required of the voter.

## Appeals Process

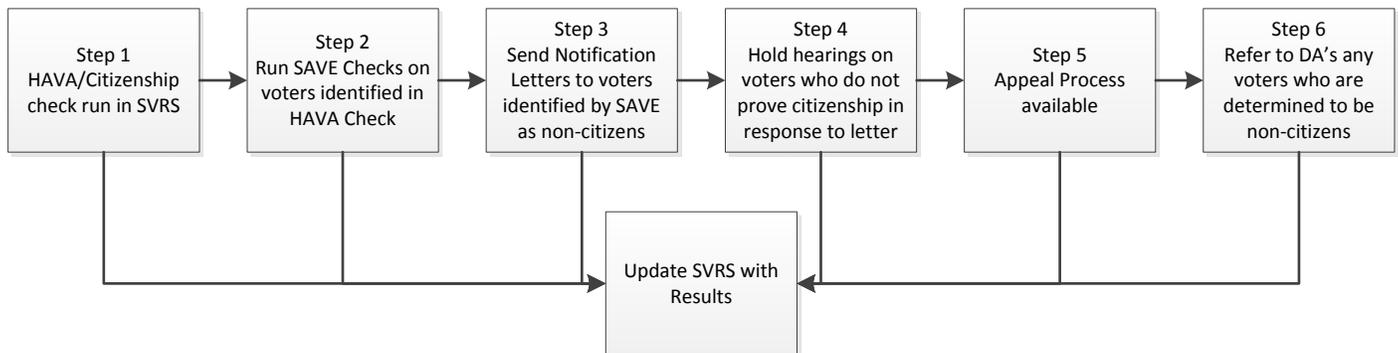
An appeal process would be available for voters to appeal the determination made at the administrative hearing. Appeals would be made to the Wisconsin Circuit Court. If the voter is determined to be a citizen in the appeal process, his or her voter record would be updated. If the Circuit Court affirms the administrative determination of non-citizenship, the voter's record would be inactivated in SVRS and his or her information would be forwarded to the appropriate District Attorney for investigation of potential voter registration fraud.

## District Attorney Referral

Voters who are confirmed to be non-citizens would be forwarded to the District Attorney for the appropriate county in which the voter was registered for investigation of potential voter registration fraud. District Attorneys would follow-up with G.A.B. staff regarding the results of their investigations for tracking and management of the process, and to update the voter's record for historical purposes.

## Process Diagram

The following diagram provides a picture of the recommended SAVE process:



Please see Appendix F for more detailed process diagrams for each of the steps in the recommended SAVE process.

## Legal Recommendations

The SAVE Fact-Finding Team proposes the following legal recommendations for use of the SAVE Program in Wisconsin.

## Legislative Authorization

Currently, there are no provisions in Wisconsin Statutes or the Federal Code specifically requiring, or even authorizing, the use of the SAVE Program to assist with any citizenship examination of voters on the statewide voter registration list. In Wisconsin, the G.A.B. is only required to enter into an agreement with the Secretary of Transportation to match personally identifiable information on the statewide voter registration list maintained by the Board under Wis. Stat. Sec. 6.36(1) with personally identifiable information maintained by the Department of Transportation (DOT). Wis. Stat. Secs. 5.056 and 85.61(1). "Personally identifiable

information” is defined as “information that can be associated with a particular individual through one or more identifiers or other information or circumstances.” Wis. Stat. Sec. 19.62(5).

The matching process between the statewide voter registration list and the DOT data was imposed by the Help America Vote Act of 2002 (HAVA), which mandated that each state’s chief election official and the official responsible for the state motor vehicle authority shall enter an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. Pub. Law 107-252, Sec. 303(a)(5)(B)(i). In addition, HAVA mandated that the state motor vehicle authority shall enter an agreement with the Commissioner of Social Security for purposes of verifying the accuracy of information on the statewide voter registration list with respect to the last four digits of a social security number provided by an individual and whether the individual shown on the records of the Commissioner is deceased. Pub. Law 107-252, Sec. 303(a)(5)(B)(ii). The information obtained from the Commissioner is considered strictly confidential and any officer, employee or contractor, or former officer, employee, or contractor of a state, who publishes or communicates such information shall be guilty of a felony and upon conviction shall be fined or imprisoned, or both. Pub. Law 107-252, Sec. 303(a)(5)(C) and 42 U.S.C. Sec. 405(r)(8).

HAVA does prescribe two additional data matching requirements that are incorporated from the National Voter Registration Act of 1993 (NVRA). Pursuant to HAVA and NVRA, states are mandated to perform voter registration list maintenance by use of felon matches with state agency records on felony status and death matches with the state agency records on death. See Pub. Law 107-252, Sec. 303(a)(2)(A)(ii) and 42 U.S.C. 1973gg-6 and 8. Wisconsin is exempt from these HAVA and NVRA requirements because Wisconsin has Election Day registration prior to the enactment of NVRA in 1993. Pub. Law 102-252, Sec. 303(a)(2)(A)(iii) and 42 U.S.C. Sec. 1973gg-2(b)(2).

However, Wisconsin HAVA enabling legislation and Board policy has established matching processes with the Wisconsin Department of Corrections (DOC) and the Department of Health Services (DHS) to perform statewide voter registration list maintenance in a similar fashion as prescribed in NVRA with respect to felon and death statuses. Wisconsin HAVA enabling legislation included a statutory requirement for DOC to provide to G.A.B., on a continuous basis, a list containing the name of each living person who has been convicted of a felony under Wisconsin law and whose civil rights have not been restored, together with his or her residential address and the date on which DOC expects his or her civil rights to be restored. Wis. Stat. Sec. 301.03(20m). This statutory provision requires DOC to provide the list of felons regularly and at no charge to G.A.B. In addition, in 2005 the State Elections Board (SEB) entered into an agreement with the Wisconsin DHS to match the statewide voter registration list with DHS death records. G.A.B. continues this matching process with DHS death records; however, the agreement permits DHS to charge G.A.B. a fee of \$0.50 per record, or on average nearly \$12,000 per year. In addition, by agreement and law, the release of the DHS information is strictly prohibited and punishable by civil and criminal penalties.

In Wisconsin, enabling legislation is necessary to implement the use of the SAVE Program to assist with any citizenship examination of voters on the statewide voter registration list. While there are no federal provisions authorizing the use of the SAVE Program for statewide voter

registration list maintenance, HAVA established minimum requirements and nothing prevents a state from establishing election technology and administrative requirements that are more strict than HAVA requires, so long as such state requirements are not inconsistent with any federal laws. Pub. Law 107-252, Sec. 304. The specific choices on the methods of complying with HAVA requirements are left to the discretion of each state. Pub. Law. 107-252, Sec. 305. The specific statutory recommendations set forth below would provide an approach to enable the G.A.B. to implement use of the SAVE Program to assist with citizenship examination of voters on the statewide voter registration list.

### Confidentiality Limitations

Federal statutes and any required Memorandum of Agreement (MOA) with the U.S. Department of Homeland Security (USDHS) have significant confidentiality restrictions upon sharing information among agencies and specifically information obtained from the SAVE Program. The Federal Privacy Act of 1974, Driver's Privacy Protection Act of 1994, and the REAL ID Act of 2005 all contain significant confidentiality restrictions on the release of information from the SAVE Program. In addition, these federal requirements restrict release of information from the Wisconsin DOT that is necessary to adequately perform a SAVE Program search and any citizenship examination of voters on the statewide voter registration list.

USDHS sample MOAs specifically incorporate the confidentiality provisions of the Privacy Act of 1974 and prohibit a user agency's re-disclosure of any information obtained from the SAVE Program. The USDHS sample MOAs also regulate and restrict the individual users authorized to access the SAVE Program and require the user agency to monitor all users. Furthermore, the USDHS sample MOAs require the user agency to safeguard, maintain, and prevent disclosure of any data provided or received pursuant to the MOAs. Pursuant to the Privacy Act, 5 U.S.C. Sec. 552a(i)(1), any person who obtains information from the SAVE Program under false pretenses or uses it for any purpose other than as provided for in the USDHS MOA may be subject to criminal penalties. Finally, the USDHS sample MOAs specifically restrict the use of the SAVE Program and G.A.B. would be limited to verification of immigration or naturalized or derived citizenship status information solely for the purpose of determining the eligibility of voters on the statewide voter registration list. The USDHS MOA would likely prohibit the ability of G.A.B. to enter an agreement with the Wisconsin Department of Workforce Development, Unemployment Compensation Division, or the Wisconsin DOT, to obtain those agencies' SAVE Program information and data, or for G.A.B. to conduct searches in the SAVE Program under their access.

The Driver's Privacy Protection Act and the REAL ID Act also contain confidentiality restrictions applicable to the Wisconsin DOT's release of personally identifiable information, particularly the AVN, which is necessary for the G.A.B. to conduct any search in the SAVE Program. While an AVN is within the definition of "personal information" under the Driver's Privacy Protection Act and normally is not discloseable by DOT, there is an exception that permits disclosure for use by a government agency in carrying out its functions. 18 U.S.C. Secs. 2721(a)(1) and (b)(1); 2725(4). General Counsel for DOT has initially agreed with this interpretation of the Federal Acts. Upon submission of a completed Vehicle/Driver Information Request (MV2896) to DOT in which the G.A.B. requests access to the DOT data for the "purpose of the government agency to carry out its functions," a final determination would be made.

In light of these strict federal confidentiality requirements for information obtained from the SAVE Program and personally identifiable privacy rights in general, Wisconsin must include this information, particularly a person's AVN, as excepted from public inspection under Wis. Stat. Sec. 19.35(1). This exception is already provided for other personally identifiable information in Wis. Stat. Sec. 6.36(1)(b)1. In addition, any statutes providing a review or hearing process for voters whose citizenship is challenged must include language requiring G.A.B. to preserve the confidentiality of information obtained from the SAVE Program. The specific statutory recommendations set forth below would provide an approach to enable G.A.B. to implement use of the SAVE Program to assist with citizenship examination of voters on the statewide voter registration list and to do so consistent with any USDHS MOA information confidentiality requirements, as well as similar provisions in the Privacy Act, Driver's Privacy Protection Act, and REAL ID Act.

### Fiscal Implications

As set forth more fully above, HAVA does not specifically require, or even authorize, a state to use the SAVE Program to assist with citizenship examination of voters on a statewide voter registration list. While HAVA does permit a state to adopt administrative requirements that are more strict than HAVA provisions so long as such state requirements are not inconsistent with any federal laws, using federal HAVA grant funds would first require a change in the Wisconsin's 2009-2014 Election Administration Plan, approval of the U.S. Election Assistance Commission after public notice and comment on the revised plan, and also publication in the Federal Register. Pub. Law 107-252, Secs. 254(a)(11) and 255. (See also, U.S. EAC Guidance, "Interpretation of Material Changes per HAVA Section 254(a)(11)," sections 2 and 3; Office of Management and Budget Circular A-102.) However, Wisconsin's 2009-2014 Election Administration Plan has already obligated the remaining federal HAVA grant funds, which will be exhausted soon. The implementation and ongoing administration costs of a SAVE Program effort would require allocation of state resources.

### Statutory Recommendations

The SAVE Fact-Finding Team proposes the following specific statutory changes to enable use of the SAVE Program in Wisconsin.

#### 1. Obtaining Personally Identifiable Information from DOT (AVNs)

Wis. Stat. Sec. 5.056 currently requires the G.A.B. Elections Division Administrator to enter into an agreement with the Secretary of DOT under Wis. Stat. Sec. 85.61(1) to "match" personally identifiable information on the statewide voter registration list maintained by the Board under Wis. Stat. Sec. 6.36(1). Currently, the initial Memorandum of Understanding between G.A.B. and DOT to facilitate HAVA matching does not provide for sharing of any personally identifiable information. Subsequently, G.A.B. entered into an additional agreement in which DOT provides some limited data to G.A.B. However, Wis. Stats. Secs. 5.056 and 85.61(1) would still need to include requirements that any agreement between G.A.B. and DOT prescribe "sharing" all personally identifiable information. This would permit G.A.B. to obtain the AVNs from DOT, which are necessary to perform a search in the SAVE Program. Furthermore, such an amendment to these statutes would permit agreements allowing for sharing of other

personally identifiable information available in the DMV database, such as full names, birth dates, driver license numbers, and residence addresses. This would permit much more proactive maintenance and verification of the statewide voter registration list.

## 2. Enabling Provisions Permitting AVN Searches in the SAVE Program

There is no current statutory provision authorizing G.A.B. to enter into an agreement with USDHS to share personally identifiable information on the statewide registration list with databases accessed by the SAVE Program. In addition, there are no statutory provisions protecting personally identifiable information obtained from USDHS or the AVN obtained from DMV.

The following statutory language would provide necessary authorization to permit G.A.B. to enter into an agreement with USDHS:

*Create **5.057. Matching program with department of homeland security.** The administrator of the elections division of the board shall enter into an agreement with the responsible official at the u.s. department of homeland security to match and share personally identifiable information on the official registration list maintained by the board under s. 6.36(1) with personally identifiable information accessible by the u.s. department of homeland security's SAVE Program. Any data received from the u.s. department of homeland security is not subject to public inspection under s. 19.35(1).*

In addition, Wis. Stat. Sec. 6.36(1)(b)1. would need to be revised to include the following provision:

*Create **6.36(1)(b)1.c.** Except as provided in par. (bm), no person other than an employee of the board, a county clerk, a deputy county clerk, and executive director of a county board of election commissioners, a deputed designated by the executive director, a municipal clerk, a deputy municipal clerk, an executive director of a city board of election commissioners, or a deputy designated by the executive director may view the alien verification number.*

## 3. Enabling Provision Permitting Statewide Voter Registration List Maintenance

There is no current statutory provision authorizing list maintenance procedures involving obtaining AVNs from DMV, submitting them to the SAVE Program, and notifying registered voters of a citizenship concern through a statewide registration list maintenance effort.

Wis. Stat. Sec. 6.48 addresses voter registration challenges and would need to be amended to include such a process.

The following statutory language would provide necessary authorization to permit a list maintenance procedure arising out of searches conducted in the SAVE Program:

*Create 6.48(3m): **CITIZENSHIP CHALLENGE BY THE BOARD.***

*(a) Upon receipt of reliable information from the u.s. department of homeland security indicating lack of u.s. citizenship, the board may challenge the registration of any*

- registered elector. The board shall notify the elector by mailing a notice by 1<sup>st</sup> class mail to the elector's registration address stating the source of the information and the procedures to respond to the challenge.*
- (b) *If the mailing is returned as undeliverable, the board shall direct the municipal clerk or board of election commissioners for the elector's registration address to provide a notice pursuant to s. 6.50(3). If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector's registration from eligible to ineligible status. If the elector applies for continuation of registration pursuant to s. 6.50(3), the municipal clerk shall immediately notify the board which shall then send another notification pursuant to (a).*
- (c) *Any elector having received the notification pursuant to (a) may contact the board to provide documentation confirming u.s. citizenship or voluntarily indicating he or she is not a u.s. citizen. The board may change the elector's registration from eligible to ineligible upon request of the elector.*
- (d) *Any elector having received the notification pursuant to (a) may contact the board to request a hearing and the matter shall then be treated as a contested case under s. 227.42. Pursuant to ss. 5.05(1)(e) and 227.46, the board may designate the legal counsel as hearing examiner to preside over any contested case and pursuant to s. 227.46(3) the board may direct that the hearing examiner's decision is the final decision of the board.*
- (e) *If the board or its designee finds that the challenge is without merit or fails to meet the standard in sub(4) and s. 6.325, it shall issue a decision dismissing the challenge. If the board or its designee finds that the challenge has merit and meets the standard in sub(4) and s. 6.325, the board shall issue a decision requiring that the board change the elector's registration from eligible to ineligible status, then pursuant to s. 5.05, refer the matter to the district attorney.*
- (f) *Until pending litigation is complete, appeals of the board's determination are complete pursuant to ch. 227, or the applicable time period for either has expired, the board shall not change an elector's registration from eligible to ineligible status or refer the matter to a district attorney, except that the board shall change an elector's registration from eligible to ineligible status and refer the matter to the district attorney, if the elector does not provide confirmation documentation of citizenship and fails to appear for a hearing.*
- (g) *Consistent with this section, the board may prescribe, by rule, the procedure and methods by which such board challenges of registrations shall occur.*

To preserve the confidentiality provisions addressed above and during the hearing process, Wis. Stat. Sec. 227.46(7)(a) would need to be amended to permit the hearing examiner to order such protective measures as are necessary to protect SAVE Program information from public disclosure.

### **Technical Recommendations**

Several technical changes are recommended to support the SAVE process. These include:

- Updates to SVRS
- Upgrading the SVRS Integration Environment

- Updates to the DMV HAVA Check Process

#### Updates to the Statewide Voter Registration System (SVRS)

SVRS would require modification to track a voter's progress through the SAVE process. More detailed analysis would be required to determine all required SVRS updates if the Wisconsin Legislature decides to use SAVE in conjunction with voter registration records, but the preliminary recommendations from the SAVE Fact-Finding Team include:

- Create new fields for the updated HAVA Check/Citizenship check with DMV to gather information such as the type of document used to obtain the driver license/ID, the AVN, and the name and date of birth as they appear in the DMV database
- Create new fields to track voters' progress (including dates) through the various steps of the SAVE process
- Create new reports to facilitate SAVE tracking and management
- Create new mailings that can be generated and tracked in SVRS for SAVE notification letters and administrative hearing letters.

#### Upgrading the SVRS Integration Environment

In order to interface efficiently with other agencies, the SVRS integration environment would need to be upgraded to an enterprise grade integration engine. The current software is not designed to support modifications outside its current scope of operation. Having a new enterprise class software system would enable efficient interface with DMV. This new software would allow online monitoring of the interfaces process by G.A.B. staff. This software also complies with industry best practices using XML formatted messages.

#### Updates to the DMV HAVA Check Process

The DMV would need to make technical changes to the existing HAVA Check process to support the new SAVE process. More discussion would need to be held with DMV to identify all updates required to support this process, however, the SAVE Fact-Finding Team recommends the following preliminary updates:

- Provide G.A.B. staff with access to the DMV database to perform the bulk voter comparison against DMV records to identify voters who used non-citizen documents to obtain their driver license/state ID, and gather AVNs.
- Enhance the HAVA Check such that DMV provides the name and date of birth as they appear in the DMV database to G.A.B.
- Enhance the HAVA Check such that if the HAVA Check is a complete match, the DMV provides citizenship information to G.A.B. such as the AVN and type of document used to obtain the driver license/state ID.

## Costs of Using SAVE

The following sections outline the estimated G.A.B. costs of using the SAVE Program. There are four major cost categories identified:

- Staff Costs
- Fees to USDHS for the SAVE Searches
- Information Technology Costs
- Administrative Costs

Total costs for the use of SAVE, including start-up and the first five years of operation, are estimated at **\$1.19 million**.

The following chart provides more details on the overall cost estimates for the use of SAVE.

### **Total SAVE Costs**

Category	Start-up	5-Year	Total
Staff Costs	\$107,339.00	\$166,955.00	\$274,294.00
SAVE Search Fees	\$5,950.00	\$3,020.00	\$8,970.00
IT Costs	\$371,302.00	\$391,320.00	\$762,622.00
Administrative Costs	\$59,505.0	\$80,881.29	\$140,386.29
<b>Total</b>	<b>\$544,096.01</b>	<b>\$642,176.29</b>	<b>\$1,186,272.29</b>

### Staff Costs

In order to support the proposed SAVE process, G.A.B. staff recommends two new positions for the initial start-up the SAVE process and to perform the initial bulk comparison.

One half-time position is recommended to facilitate the SAVE process on an on-going basis.

Duties of the new staff would include (but are not limited to):

- Setting up the new SAVE process
- Performing the bulk comparison
- Performing the on-going SAVE searches
- Sending notification letters
- Scheduling hearings
- Tracking and administering the SAVE Program
- Providing reports to management on SAVE results and effectiveness
- Training local election officials on the new SAVE processes
- Updating manuals and training guides with new SAVE processes
- Other SAVE-related duties as necessary.

Total staff costs for initial start-up plus 5 years of operation are **\$274,294.00**. The following chart describes the roles of the positions, as well as the appropriate pay scale, including fringe benefits.

### Start-Up Staff Costs

Quantity	Role	Annual Salary (incl. fringe)
1	Elections Specialist	\$66,782.00
1	Office Operations Associate	\$40,557.00
	<b>Total Staff Start-Up Costs:</b>	<b>\$107,339.00</b>

### Ongoing Staff Costs

Quantity	Role	Time Allocation	Annual Salary (incl. fringe)	Total
1	Elections Specialist	50%	\$66,782.00	\$33,391.00
	<b>Total 5-Year Staff Costs</b>			<b>\$166,955.00</b>

### Fees to USDHS for SAVE Checks

As stated earlier in the report, USDHS charges a fee per check to use the SAVE Program. The estimated total fees for SAVE searches over the first five years, including the bulk comparison is **\$8,970.00**. The following charts describe the projected costs of the SAVE searches.

### SAVE Search Fees for Initial Bulk Comparison

Cost per Level	\$0.50
Levels that would need to be run	2 <sup>8</sup>
Projected number of voters	5950 <sup>9</sup>
<b>Total Costs</b>	<b>\$5,950.00</b>

### Ongoing SAVE Search Fees

Year	2013	2014	2015	2016	2017	5-Year
Cost per Level	\$0.50	\$0.50	\$0.50	\$0.50	\$0.50	
Levels that would need to be run	2	2	2	2	2	
Projected voters run per year	200 <sup>10</sup>	783 <sup>11</sup>	200	1637 <sup>12</sup>	200	
<b>Yearly Total Costs</b>	<b>\$200.00</b>	<b>\$783.00</b>	<b>\$200.00</b>	<b>\$1,637.00</b>	<b>\$200.00</b>	<b>\$3,020.00</b>

<sup>8</sup> MOA with USDHS will likely require second level SAVE searches to be performed.

<sup>9</sup> Based on statistics provided by Colorado, approximately 0.17% (approximately 3,900 out of approximately 2.23 million registered voters) of their registered voters were identified as potential non-citizens in their comparison with motor vehicle records. Applying that percentage to Wisconsin's approximately 3.5 million voters renders this estimate.

<sup>10</sup> The same 0.17% was compared to the average number of voter registrations processed in odd numbered years that have spring elections only. Averages were calculated based on voter registrations processed in SVRS from 2006 through 2012.

<sup>11</sup> Similarly, the 0.17% was applied to average registrations processed in even numbered years that include a gubernatorial election.

<sup>12</sup> Similarly, the 0.17% was applied to average registrations processed in even numbered years that include a presidential election.

### Information Technology Costs (G.A.B.)

Information technology costs are estimated for costs incurred by G.A.B. This Report does not address potential IT costs for DMV. If SAVE use is approved for Wisconsin, more detailed analysis would need to be done with DMV to determine the fiscal impact of SAVE on DMV.

The G.A.B. would need staff to develop the interface, implement SVRS changes, and develop additional reports necessary to retrieve and store the information identified above, in addition to purchasing new infrastructure for the upgraded integration engine. In order to do this, full time development resources would be staffed for one year. The new IT resource and the new G.A.B. staff positions would require additional computers. The G.A.B. would incur on-going costs for maintenance of the system, as well as monthly server hosting.

Total estimated IT costs, including start-up and the first five years of operation would be **\$762,622.00**. Start-up IT Costs are estimated at **\$371,302.00**, with ongoing costs estimated at **\$391,320.00**.

The following charts describe the IT costs incurred using SAVE in more detail:

#### **Start-up IT Development Costs**

Description	Hours	Rate	Total
IS Development Resource	2000	\$135.00 <sup>13</sup>	\$270,000.00
Project Management	520	\$135.00	\$70,200.00
<b>Total Staff</b>			<b>\$340,200.00</b>

#### **Start-up Hardware/Software Costs**

Quantity	Description	Cost	months	Total
1	BizTalk Server Software <sup>14</sup>	\$10,138.00	one-time	\$10,138.00
6	Server Hosting <sup>15</sup>	\$187.00	12	\$13,464.00
3	Desktop Computers/Software <sup>16</sup>	\$2,500.00	one-time	\$7,500.00
	<b>Total Hardware/Software</b>			<b>\$31,102.00</b>

#### **Ongoing IT Costs**

Quantity	Description	Rate	Hours or Months	Total
1	IS Development Resource	\$135.00	480	\$64,800.00
6	Server Hosting	\$187.00	12	\$13,464.00
	Total Annual IT Costs			\$78,264.00
	<b>Total 5-Year IT Costs</b>			<b>\$391,320.00</b>

<sup>13</sup> IT resource rates are negotiable at time of hire. This Report uses the maximum rate for budget purposes.

<sup>14</sup> Software for the Enterprise Integration Engine required to upgrade the HAVA Check process at G.A.B.

<sup>15</sup> Based on standard hosting rates at the Division of Enterprise Technology, maintaining DEV, UAT, and PROD environments

<sup>16</sup> New computers for the two G.A.B. staff resources and the IS Development Resource. Includes costs for operating system, office productivity software, e-mail services, storage for shared drives, etc.

### Administrative Costs

The G.A.B would incur miscellaneous administrative costs at various stages of the SAVE process. Administrative costs include:

- Printing and mailing costs for notification letters
- Desks and office space for new staff
- Costs for administrative hearings

The estimated total administrative costs including start-up and the first five years would be **\$140,386.29**. Start-up administrative costs are estimated at **\$59,505.01**, with on-going costs estimated at **\$80,881.29**.

The following charts describe these administrative costs in more detail.

#### **SAVE Printing and Mailing Costs for Initial Bulk Comparison**

Type of Notice	Quantity	Postage	Printing	# of Pages	Cost
Projected Voters Run	5,950				
SAVE Notification Letter	893	\$0.45	\$0.10	3 <sup>17</sup>	\$669.38
Hearing Notification Letters	446	\$0.45	\$0.10	4 <sup>18</sup>	\$379.31
<b>Total Costs</b>					<b>\$1,048.69</b>

#### **Start-up Office Space Costs**

Quantity	Cost/month	Months	<b>Total</b>
3 <sup>19</sup>	\$400.00	12	<b>\$14,400.00</b>

#### **Hearing Costs for Initial Bulk Comparison**

Role	hours	days	Pages per day	Rate	Total
G.A.B. Director <sup>20</sup>	8	14 <sup>21</sup>		\$87.33	\$9,780.96
Staff Counsel	8	14		\$60.03	\$6,723.36
Court Reporter	8	14		\$20.00	\$2,240.00
Transcription		14	320 <sup>22</sup>	\$5.65	\$25,312.00
<b>Total Costs</b>					<b>\$44,056.32</b>

<sup>17</sup> Per specifications in MOA with USDHS, notification letter must include two-page USDHS fact sheet

<sup>18</sup> Hearing notice plus copy of original notification letter and USDHS fact sheet

<sup>19</sup> Office space for the two G.A.B. staff resources and the IS development resource

<sup>20</sup> Assumes the Board will delegate hearing responsibilities to the Director and General Counsel of the G.A.B.

<sup>21</sup> 14 days of administrative hearings is calculated based on an assumption of 32 15-minute hearings in an 8 hour day, multiplied by the number of hearing notices sent (assuming all voters require a hearing).

<sup>22</sup> Assumes 10 pages of transcription per hearing, multiplied by 32 hearings per day

### SAVE Printing and Mailing Costs Ongoing

Year	2013	2014	2015	2016	2017	5-Year
Projected SAVE Searches Per Year	200	783	200	1637	200	
SAVE Notification Letters	30	117	30	246	30	
Hearing Notification	15	59	15	123	15	
<b>Yearly Total Costs</b>	<b>\$35.25</b>	<b>\$138.00</b>	<b>\$35.25</b>	<b>\$288.52</b>	<b>\$35.25</b>	<b>\$532.28</b>

### Office Space Costs Ongoing

Quantity	Cost/month	Months	Total
2 <sup>23</sup>	400.00	12	\$9,600.00
	<b>5-Year Total</b>		<b>\$48,000.00</b>

### Hearing Costs Ongoing<sup>24</sup>

Role	2013	2014	2015	2016	2017	5-Year
Director	\$327.49	\$1,282.11	\$327.49	\$2,680.49	\$327.49	
Staff Counsel	\$225.11	\$881.32	\$225.11	\$1,842.55	\$225.11	
Court Reporter	\$75.00	\$293.63	\$75.00	\$613.88	\$75.00	
Transcription	\$847.50	\$3,317.96	\$847.50	\$6,936.79	\$847.50	
<b>Total</b>	<b>\$3,488.10</b>	<b>\$7,789.02</b>	<b>\$3,490.10</b>	<b>\$14,089.69</b>	<b>\$3,492.10</b>	<b>\$32,349.01</b>

### Conclusion

If the Wisconsin legislature decides to use the SAVE Program relative to voter registration, this would require new legislation, additional funding, partnership between DMV and G.A.B., and G.A.B. implementation and management of the entire process. The recommendations provided in this report outline a framework in which Wisconsin could effectively use the SAVE program to examine citizenship for voters on the voter registration list, and the estimated costs associated with such an initiative. This report gives Wisconsin legislators information to assess the utility and feasibility of the SAVE Program, and to ultimately make legislative decisions regarding this program on behalf of Wisconsin's citizens.

<sup>23</sup> Office space for remaining G.A.B. staff resource and the IS development resource

<sup>24</sup> On-going hearing costs are estimated based on the estimated number of hearing notices sent each year (assuming all voters require a hearing) multiplied by the number of hours required for those hearings (assuming four 15-minute hearings per hour) and the cost per hour. Transcription is based on an assumption of 10 pages per hearing.

## **Appendices**

- A. Letter from State Senator Mary Lazich to Kevin Kennedy on July 17, 2012
- B. Letter from Kevin Kennedy to Senator Lazich on July 19, 2012
- C. Charge Statement from Nathaniel E. Robinson establishing the SAVE Fact-Finding Team
- D. List of Federal Databases Searchable Through SAVE
- E. SAVE Research with Other States
- F. Process Flows for Recommended SAVE Use

## Appendix A

Letter from State Senator Mary Lazich to Kevin  
Kennedy on July 17, 2012



HAND DELIVERED

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# Mary Lazich

GOVERNMENT ACCOUNTABILITY BOARD

Wisconsin State Senator  
Senate District 28

July 17, 2012

Kevin Kennedy  
Director, Government Accountability Board  
212 E. Washington Avenue Third Floor  
Madison, WI 53703  
*-Hand Delivered-*

Dear Kevin,

The federal government recently granted Florida elections officials access to a law enforcement database containing names of non US citizens. The Systematic Alien Verification for Entitlements (SAVE) database, maintained by the Department of Homeland Security, is valuable in vetting entries in our Statewide Voter Registration System (SVRS) and promoting greater election integrity.

As you may know, the Obama administration originally rejected Florida's request for this information. After judicial intervention, federal officials reversed their stance and made the information available to state officials. It is time for Wisconsin to follow Florida's lead and clean up the SVRS.

I urge you to take initiative on this matter and to do so quickly. The integrity of our state's electoral process has been legitimately questioned. Now, Wisconsin needs a proactive leader willing to go the extra mile to restore faith in our elections.

Thank you for your careful consideration of this very important issue. I look forward to your swift action and reply.

Sincerely,

Mary Lazich  
State Senator  
Senate District 28

MAL/ajh  
cc: Government Accountability Board Members  
Senate all  
Assembly all



## Appendix B

Letter from Kevin Kennedy to Senator Lazich on July  
19, 2012

# State of Wisconsin\Government Accountability Board

Post Office Box 7984  
212 East Washington Avenue, Third Floor  
Madison, WI 53707-7984  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE DAVID G. DEININGER  
Chair

KEVIN J. KENNEDY  
Director and General Counsel

July 19, 2012

The Honorable Mary Lazich  
State Senator, Senate District 28  
Room 8, State Capitol  
Madison, WI 53702

Dear Senator Lazich,

Thank you for contacting our office about the use of the Systematic Alien Verification for Entitlements (SAVE) database maintained by the Department of Homeland Security (DHS) in conjunction with Wisconsin's Statewide Voter Registration System (SVRS). Our staff has been following Florida's efforts to obtain access to this list.

We will explore the viability of using SAVE in conjunction with SVRS. In order to do that we will need to get more information from DHS about the content and structure of the database as well as any conditions on its availability. In order to match information between the SAVE and SVRS databases we will need to know what fields are maintained in SAVE and the database format.

Any matching procedures will require the development of criteria for determining matches/non-matches along with protocols for the treatment of the outcome of the matching process. In addition, SVRS will have to be modified to enable it to accept SAVE data in electronic format, conduct the matching process and develop reports for use by local election officials.

This will take time and money, both of which are in short supply at this point. However, we will proceed with gathering the requisite information to evaluate the feasibility and practicality of using SAVE information in conjunction with SVRS. We will also review any statutory limits on our authority to implement the use of this database

The G.A.B. will keep you, other Members of the Legislature and the public apprised as we proceed.

**Government Accountability Board**

A handwritten signature in black ink that reads "Kevin J. Kennedy". The signature is written in a cursive, flowing style.

Kevin J. Kennedy  
Director and General Counsel

C: Government Accountability Board Members

## Appendix C

Charge Statement from Nathaniel E. Robinson  
Establishing the SAVE Fact-Finding Team

# State of Wisconsin \ Government Accountability Board

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<http://gab.wi.gov>



JUDGE DAVID G. DEININGER  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

**DATE:** July 24, 2012

**TO:** **SAVE Fact-Finding Team**

- Sarah Whitt, SVRS Functional Lead
- David Grassl, IT Development Team Director
- Ann Oberle, UAT Lead Tester
- Katie Mueller, SVRS Specialist
- Colleen Adams, SVRS Specialist
- Brian Bell, Elections Data Manager
- Reid Magney, Communications Director
- Shane Falk, Staff Counsel

**FROM:** Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board

**SUBJECT:** A Fact-Finding Assignment  
Research the Federal Systematic Alien Verification for Entitlements (SAVE) Database

State Senator Mary Lazich asked Director Kennedy to compare data from the Federal Systematic Alien Verification for Entitlements (SAVE) database with SVRS voter records in order to “promote greater election integrity.” A copy of both the Senator’s July 17, 2012 letter and Director Kennedy’s July 19, 2012 response are attached.

You are charged with the task of conducting a thorough fact-finding review of the Federal Department of Homeland Security’s SAVE database and determining what Wisconsin would need to consider for comparing SAVE data with voter records stored in SVRS.

## The Charge for the SAVE Fact-Finding Team

1. Determine exactly what is SAVE, a Federal database maintained by the Department of Homeland Security (USDHS), its intent, why it was created and how its data are used and for what purpose.
2. Find out if USDHS has a disclosure/notification policy that requires the Department to notify citizens whenever their names are added to the SAVE database and the reason for such actions.
3. Gather information on the structure, format and content of the SAVE database as well as its availability from USDHS.
4. Determine the procedure that the USDHS requires for states to access and use the SAVE database, and determine and monitor which states are seeking to access and utilize the SAVE database.

5. Regularly research, review and monitor past and current sources (online sources, periodicals, newspapers, etc.) that are likely to publicize information about the SAVE database, and states' publically-stated interests in accessing and using the SAVE database. Maintain a summary digest of this information. Please refer to the section below, "SAVE News Sources" as a starting point.
6. Director Kennedy and the G.A.B. Staff Counsels will assess whether G.A.B. has existing legislative authority to compare SAVE data with voter records stored in SVRS; however, your research should include the authority/mandate and procedures that the State of Florida and other states that have expressed interest in using the SAVE database, are relying on to compare their respective voter registration system databases against SAVE.
7. In the event the Government Accountability Board would direct, or the Wisconsin Legislature would so mandate the Board to access and use the SAVE database to compare the State's voter records stored in SVRS, your task is to determine:
  - SVRS' current and future capability and capacity to manage such a comparison, including potential issues and obstacles to achieving a matching protocol that would identify individuals who are not eligible to vote.
  - If required, the kinds of upgrades and retrofits needed to enable a SAVE/SVRS data comparison.
  - An estimated amount of time it would take to engineer the necessary upgrades/ retrofit, and test and ready them for implementation.
  - The kind and nature of collaboration, if any, would be needed with the DMV to make this happen.
  - An estimated cost of the modifications that would have to be made to SVRS in order for SVRS to be able to accept SAVE data in electronic format, conduct the matching process and develop reports for use by local election officials.
  - The kinds of SAVE/SVRS matching procedures/criteria that will need to be developed for determining matches/non-matches along with protocols for the treatment of the outcome of the matching process.
  - The impact of SAVE on Local Election Officials in terms of increased workload, time and costs.
  - The impact on voters with a name that matches someone in SAVE; both correct and incorrect matches.
  - The approach and time for informing Local Election Partners about the SAVE review, and bringing these officials into the discussion regarding the feasibility and utility of SAVE as well as increased workload, time and costs.
  - The kinds of education, training and technical assistance that would be required for Local Election partners, and the estimated costs of this outreach initiative.
  - The kinds of public information and outreach campaign that would be needed to educate and inform Wisconsin electorate, and the estimated costs of this outreach initiative.
  - Research PEW's Voter Registration Modernization (VRM) Project and its initiative called "ERIC." Assess ERIC's capabilities, capacity and functionalities, and determine its utility for comparing SAVE data against Wisconsin voter records stored in the SVRS database.

- Any other information that is germane to G.A.B. management, members of the G.A.B. and members of the Legislature's understanding the impacts and ramifications of Wisconsin pursuing the use of the SAVE database option.
8. The intent is for this assignment to be as comprehensive as possible. The Fact-Finding Team is not limited to the "letter" of this Charge Statement. The Team is encouraged to go beyond the scope of the Statement as necessary in carrying out the intent of this Charge. The Team is encouraged and expected to explore related impacting issues and make recommendations accordingly, that may go beyond the specifics of this Charge Statement. This Charge Statement may be amended as deemed necessary by the Elections Division Administrator.

#### Public Information Sources Regarding SAVE

The Fact-Finding Team is asked to regularly research, review, monitor and document past and current articles and information from online sources, periodicals, magazines, newspapers, etc., that are likely to publicize information about the SAVE database. The following articles are currently known sources, and are intended as a start for creating a SAVE summary digest.

1. <http://www.chron.com/news/politics/article/Texas-wants-access-to-immigration-database-to-3716525.php>
2. <http://miami.cbslocal.com/2012/07/18/gov-scott-election-officials-spar-over-ineligible-voters/>
3. <http://www.heraldtribune.com/article/20120718/ARTICLE/120719608/2416/NEWS?Title=In-Sarasota-County-a-brief-voter-purge>
4. <http://miami.cbslocal.com/2012/05/29/decorated-broward-war-hero-targeted-in-gov-scotts-voter-purge/>
5. <http://www.wokv.com/news/news/local/duval-elections-office-moving-forward-cautiously-v/nPxyg/>

#### Priorities

Focusing on, and planning for the August 14, 2012 Partisan Primary and the November 6, 2012, General and Presidential Election will continue to be your individual and collective priority. The Team, however, is expected to spend 2-3 hours a week addressing the tasks in the Charge Statement until the fall election cycle has concluded. After the fall elections, the Team is expected to devote the necessary time to these tasks in order to be able to submit a final report as indicated in the Timetable below.

#### Timelines

1. Regular Verbal Updates: The Team Lead should be prepared to provide verbal updates at the Weekly Elections Divisional Staff Meetings.
2. First Preliminary Report Due Friday, September 14, 2012: The Fact-Finding Team is asked to present a preliminary report that should at least include a summary of USDHS' policy and procedure for states to use SAVE, limitations and initial program and technical issues with Wisconsin using SAVE, and other noteworthy findings.
3. Second Preliminary Report Due Friday, November 2, 2012: This second preliminary report should include a more flushed-out list of program and technical issues identified in the preliminary report, policies and procedures that are needed, feedback from Local Election Officials, as well as estimated costs for SVRS upgrades and retrofits, personnel and other resources that would be needed to utilize the SAVE database, and challenges and cost for local implementation.

4. Final Report Due Friday, December 7, 2012: The Fact-Finding Team's final report should fully address at least all the points in item #3, as well as options and recommendations for consideration, and include any other information that will be helpful to the decision-making process.

#### Team's Leadership

There are many SAVE areas to be researched and explored in order for the data-gathering process to be as thorough and complete as possible. Each appointed member has an expertise that will bring value to the data-gathering and fact-finding process, i.e.

- Sarah Whitt, SVRS Functional Lead
- David Grassl, IT Development Team Director
- Ann Oberle, UAT Lead Tester
- Katie Mueller, SVRS Specialist
- Colleen Adams, SVRS Specialist
- Brian Bell, Elections Data Manager
- Reid Magney, Communications Director
- Shane Falk, Staff Counsel

Sarah Whitt is appointed as the Team Lead. Sarah is asked to convene an organizational meeting as soon as possible, at which time the Elections Division Administration and Elections Supervisor will participate to formally charge the Team. The Team is encouraged to call upon other Elections Division staff as necessary to assist with addressing and fulfilling the provisions of the Charge Statement.

#### Policy Directions/Oversight Guidance/Legal Assistance

As usual, Director Kennedy will provide overall policy direction for this SAVE fact-finding task. Elections Division Administrator Robinson and Elections Supervisor Hein will provide oversight responsibilities and guidance. Staff Counsels Falk and Haas will provide legal assistance as required.

cc: Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Ross D. Hein  
Elections Supervisor  
Government Accountability Board

Shane Falk  
Staff Counsel  
Government Accountability Board

Michael R. Haas  
Staff Counsel  
Government Accountability Board

Staff Members, Elections Division  
Government Accountability Board

**Appendix D**  
**List of Federal Databases Searchable Through SAVE**

Database	Description	Owner
ADIS	The Arrival and Departure System (ADIS) gathers information on non U.S. citizens from several USDHS systems, including SEVIS, US Visit, Claims, and TECS. ADIS tracks when and where a traveler entered or departed the United States, what documents the traveler used, known name variances, secondary inspection results, I-94 Number, Receipt Number, and Class of Admission.	US-VISIT
CIS	The Central Index System (CIS) contains biographical information on individuals with Alien-Files (A-Files), most of whom are noncitizens. CIS also contains employment authorization data from the Employment Authorization Document System (EADS), and information from Executive Office for Immigration Review (EOIR).	USCIS
CLAIMS 3	The Computer-Linked Application Information Management System 3 (CLAIMS 3) tracks cases and assists in processing applications for benefits and visas.	USCIS
CLAIMS 4	The Computer-Linked Application Information Management System 4 (CLAIMS 4) manages the processing of applications and petitions received by USCIS Service Centers. The SAVE Program searches CLAIMS 4 for naturalization information.	USCIS
(DOS-CCD)	The Department of State, Consular Consolidated Database (DOS-CCD) holds current and archived data from the Consular Affairs domestic and post databases around the world, providing a set of centralized visa services.	Department of State
EARM	The ENFORCE Alien Removals Module (EARM) is used by Immigration and Customs Enforcement (ICE), Office of Deportation and Removal Operations to track the removal of individuals from the U.S.	ICE
EID	The Enforcement Integrated Database (EID) contains immigration law enforcement data.	ICE
EOIR	The Department of Justice Executive Office for Immigration Review (EOIR) database provides automated information about individuals that are in deportation proceedings and also provides asylum information.	Department of Justice (DOJ)
(EDMS)	The Enterprise Document Management System (EDMS) is a web-based portal used to search and view digitized Alien Registration Files.	USCIS
(CPMS)	The Customer Profile Management System (CPMS) stores biometric images and other information.	USCIS

Database	Description	Owner
(eCISCOR)	The Enterprise Citizenship and Immigration Services Centralized Operational Repository (eCISCOR) is an intermediary repository for immigration and naturalization information derived from several USCIS systems.	USCIS
MFAS	The Marriage Fraud Amendment System (MFAS) is a case tracking system that maintains records on eligible immigrant entrants, tracks cases, and accepts petitions from immigrants and spouses.	USCIS
MIDAS	The Microfilm Digitization Application System (MIDAS) contains more than 85 million digitized historic immigration related records that were previously stored on microfilm.	USCIS
NFTS	The National File Tracking System (NFTS) provides local and centralized control of all files within a designated USCIS File Control Office (FCO).	USCIS
PCQS	The Person Centric Query System (PCQS) provides users with the ability to search multiple systems for persons from a centralized location.	USDHS
RAPS	The Refugees, Asylum, and Parole System (RAPS) tracks asylum case data from application filing through final decision and then to eventual adjustment to Legal Permanent Resident status.	USCIS
RTA	Real Time Arrival (RTA) augments the Treasury Enforcement Communications System (TECS) to include “real time arrival” data. RTA is populated by border officers as travelers pass air and sea borders.	CBP
SEVIS	The Student and Exchange Visitor Information System (SEVIS) is a web-based system for administering visas for students and exchange visitors studying in the United States. Data on more than 5.6 million nonimmigrant F, M and J visa holders, their dependents and schools can be found in SEVIS. Note that some SEVIS updates come from education institutions.	ICE Student and Exchange Visitor Program
TECS	The Treasury Enforcement Communications System (TECS) provides information on arrivals and departures to support the controlled admission of nonimmigrants to the United States through ports of entry and to identify potential overstays.	CBP

## **Appendix E**

### **SAVE Research with Other States**

G.A.B. staff contacted each of the nine states identified as using SAVE or planning to use SAVE. These include Arizona, Colorado, Florida, Georgia, Iowa, North Carolina, Ohio, Texas, and Virginia. The SAVE Fact-Finding Team interviewed all states except Georgia and Arizona (who were not available for interview).

G.A.B. staff identified the following key areas of comparison between these states:

- Are SAVE searches performed by the State or by local election officials?
- What method is used for the SAVE search? Is it used as a list maintenance function to ensure all voters on the registration list are citizens? Is it used to resolve non-citizenship complaints? Is it used at the point of registration to verify citizenship before a voter can become registered?
- How are AVNs obtained? Are they provided by the voter when they register or are they gathered through data comparisons with motor vehicle records?
- How many levels of SAVE search are done? Are second and third level searches performed in addition to the first level search?
- What process is used to notify voters that have been identified as a potential non-citizen in response to a SAVE search?
- How does a voter respond to such notification to verify their citizenship?
- What evidence can be provided to document citizenship?
- How many voters were identified by other states as potential non-citizens? Were any voters removed from voter registration list?

The following chart shows the state by state research done by SAVE Fact-Finding team. It also provides statistics on the number of voters identified at different stages in the process.

Note that to date, only a few states have actually used SAVE. Several other states are still in the process of negotiating their MOA with DHS and may not yet have established all their policies and procedures.

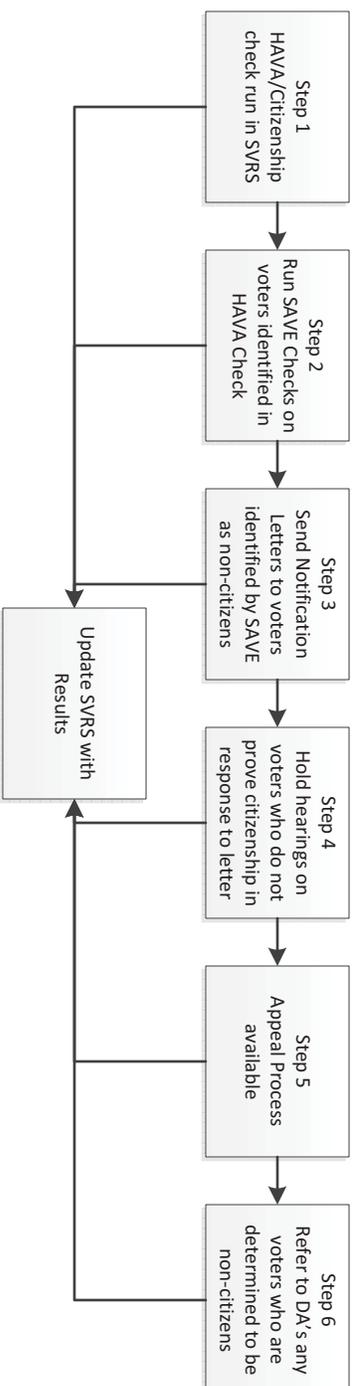
State	MOA Status	State / Local Use	Method of SAVE Use	Primary Review	Secondary Review
Arizona	Approved	Local (5 counties)	Point of Registration	Voters must provide proof of citizenship to register; can present AVN	
Colorado	Approved	State Level	Voter List Maintenance	Get AVNs from DoR by matching voter records on first and last name, date of birth, DL#. Then run SAVE level 1	SAVE Level 2
Florida	Approved	State Level check with County Review	Voter List Maintenance	Get list of AVNs from DHSMV by matching voter records on exact DL# or exact SSN. compare matches to SAVE; manually review matches; run through SAVE level 1	Additional SAVE Level 1 Search
Georgia	Near Complete		Point of Registration	Voters must provide proof of citizenship to register; can present AVN	
Iowa	Near Complete	State Level	Complaint	AVN from DOT; matching based on 100% of DL or DOB and Name; run through SAVE Level 1	SAVE Level 2
North Carolina	Near Complete	State Level	Voter List Maintenance	Citizenship check with DMV will be done as part of the HAVA Check. Voter is registered normally and Level 1 SAVE check is performed later by state staff	
Ohio	Exploratory	State Level	Complaint	If county receives a complaint, county sends name to state for individual SAVE level 1 search; DMV would not provide AVN for any bulk comparison	
Texas	Exploratory	State Level	Complaint	Name provided from those that denied jury duty due to citizenship; other complaint sources not determined	
Virginia	MOU near complete, additional legislation needed	State Level	Voter List Maintenance	AVN would be provided by voter at time of registration	

State	Notice Process	Hearing Process	Removal Process	Evidence to prove citizenship
Arizona				
Colorado	Send notification with 30 days to respond, schedule hearing, or be removed	Can present documentation, or a sworn affidavit	Voter removed if no response in 30 days, or requests self-removal	Sworn statement; evidence of citizenship
Florida	Certified mail, return receipt requested; includes basis of ineligibility, supporting documentation, 30 days to respond notice, right to hearing notice, return form	After 30 days from notice, publish notice in newspaper with 30 days to respond, provide a hearing if requested	If no hearing requested, voter is removed from rolls, can be appealed to a court; if hearing requested and found ineligible voter is removed from rolls	Evidence of citizenship
Georgia				
Iowa	Send letter; after 14 days, second letter sent; if not response, county auditor given information and told name can be taken off list	If person sends documentation, name not sent to auditor	SoS cannot remove voters, must be done by county auditor at local level	Evidence of citizenship
North Carolina	Notification letter. Voter has 30 days to provide evidence. If no response or evidence provided, the voter is removed from the poll list.		State removes voters if they do not respond to notification letter	Evidence of citizenship
Ohio	County would notify voter and set up a hearing	If name found on SAVE, name given to the county and hearing held at county level	SoS cannot remove voters, must be done at county level	
Texas				
Virginia				

State	Submitted to SAVE	SAVE Showed Non-Citizen	Removed from Voter Registration System
Arizona			
Colorado	1,400	151	Appeals pending
Florida	2,600	106	Referred to County Clerks for final decision regarding removing the voters from the voter registration system
Georgia			
Iowa	From DMV Comparison: 3,582 registered since 2008; 1,208 of whom voted in 2010 General	Currently enjoined by Iowa Courts	
North Carolina	Less than 1,000 identified as potential non citizens based on DMV comparison in 2011. Have not yet used SAVE		From DOT comparison (not SAVE): 637 Letters (223 responded with proof of citizenship, 79 acknowledged non-citizens, 331 removed for multiple no-response)
Ohio			
Texas			
Virginia			

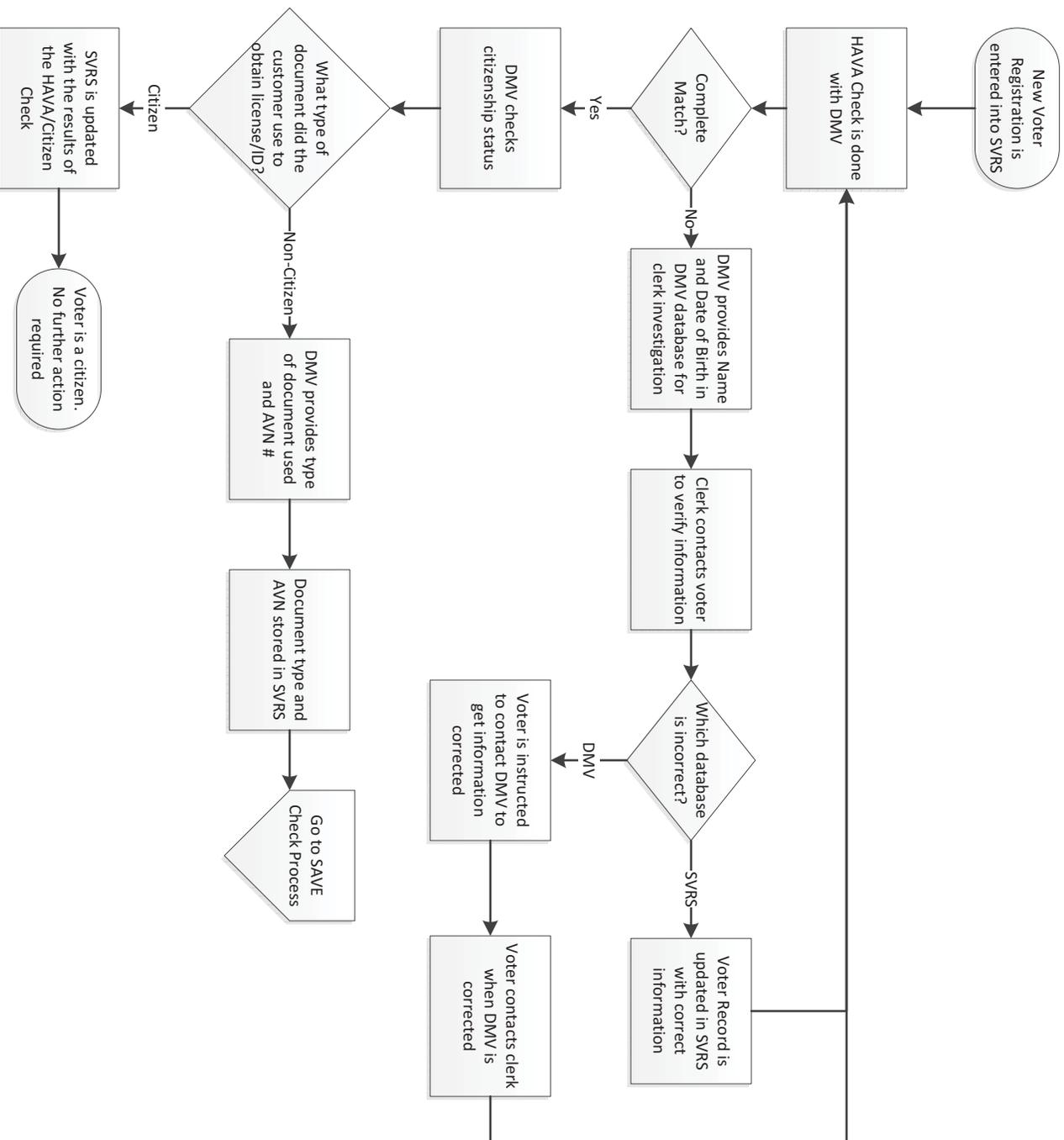
## Appendix F

### Process Flows for Recommended SAVE Use



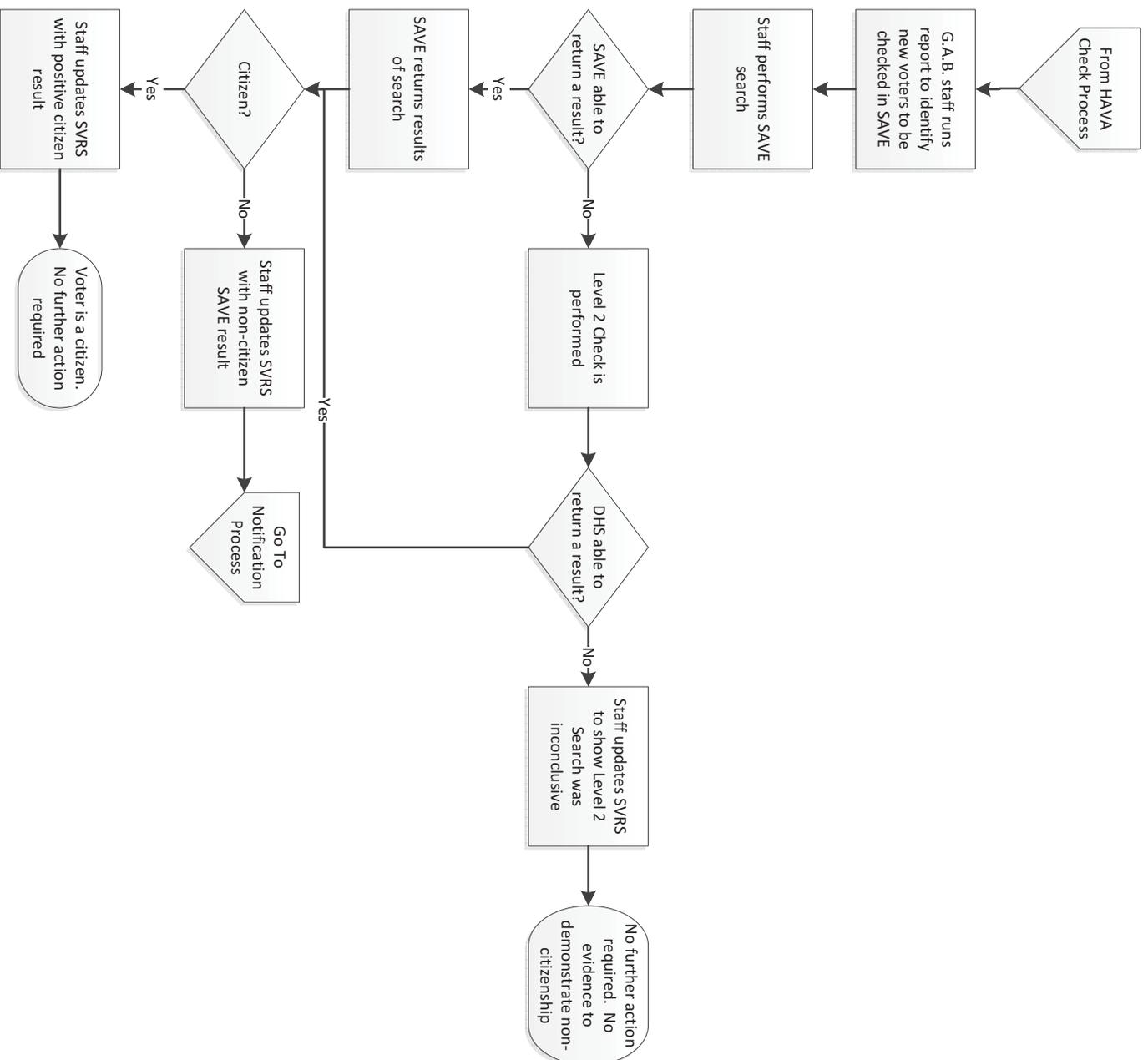
# Step 1 – HAVA Check Process

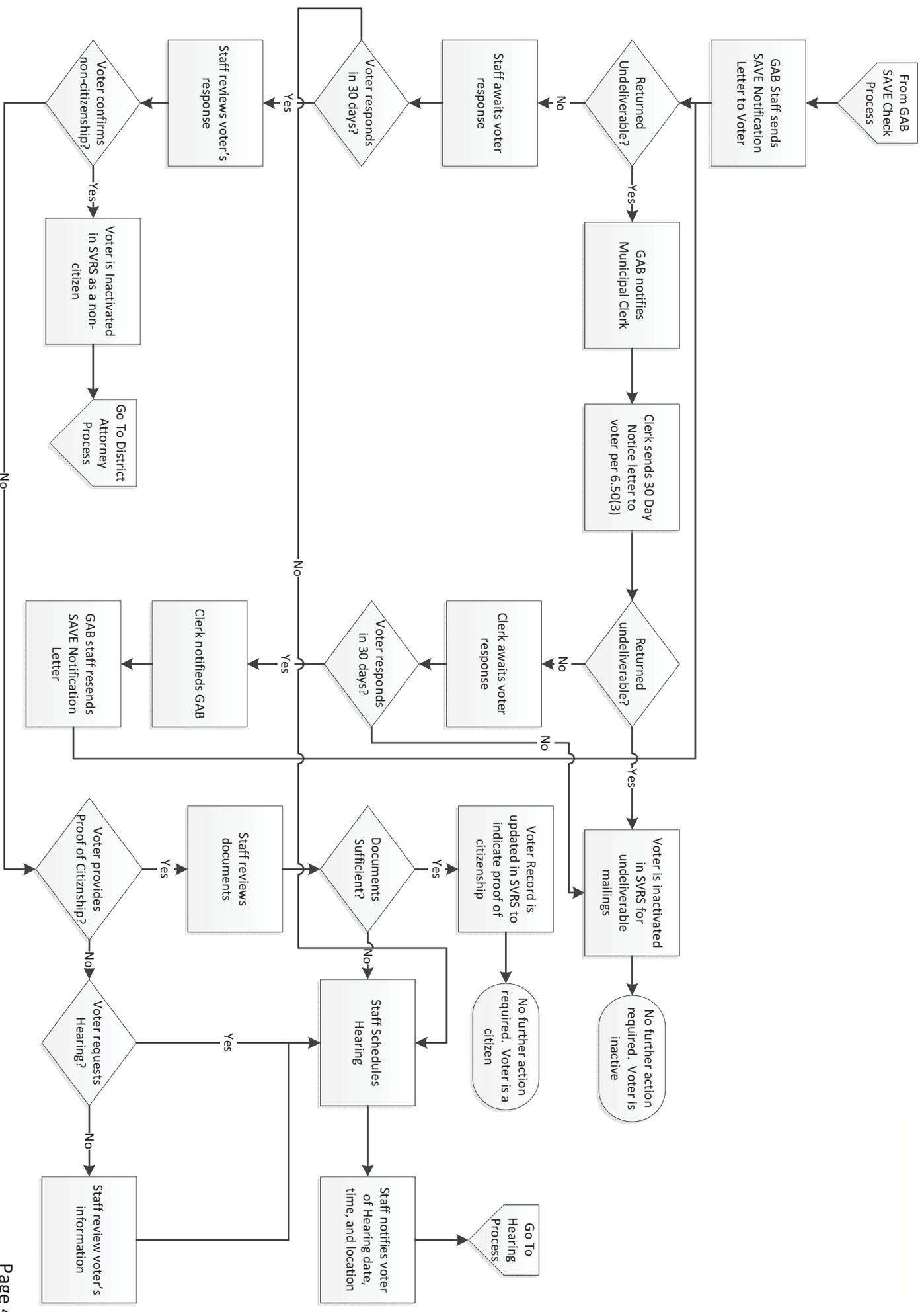
December 12, 2012

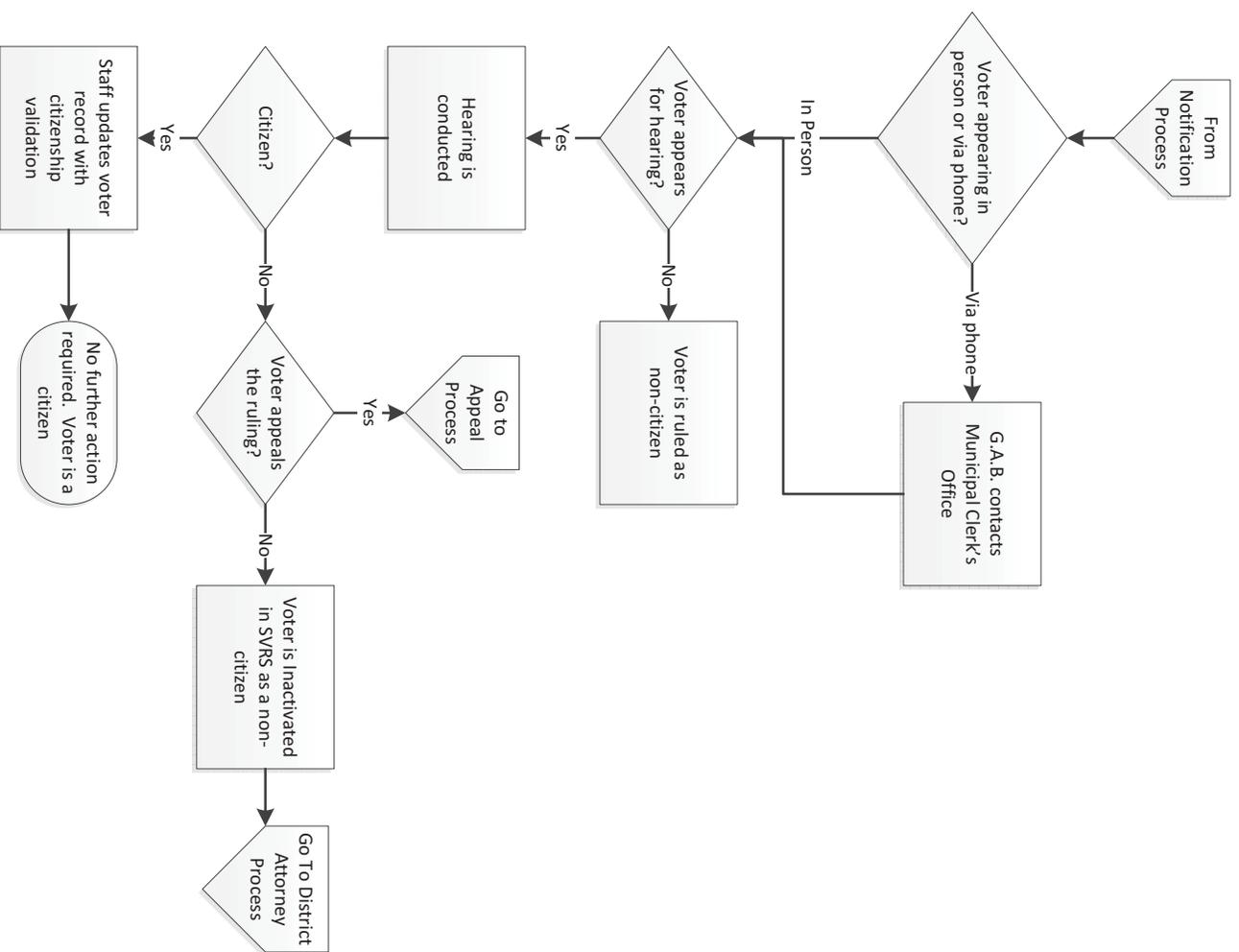


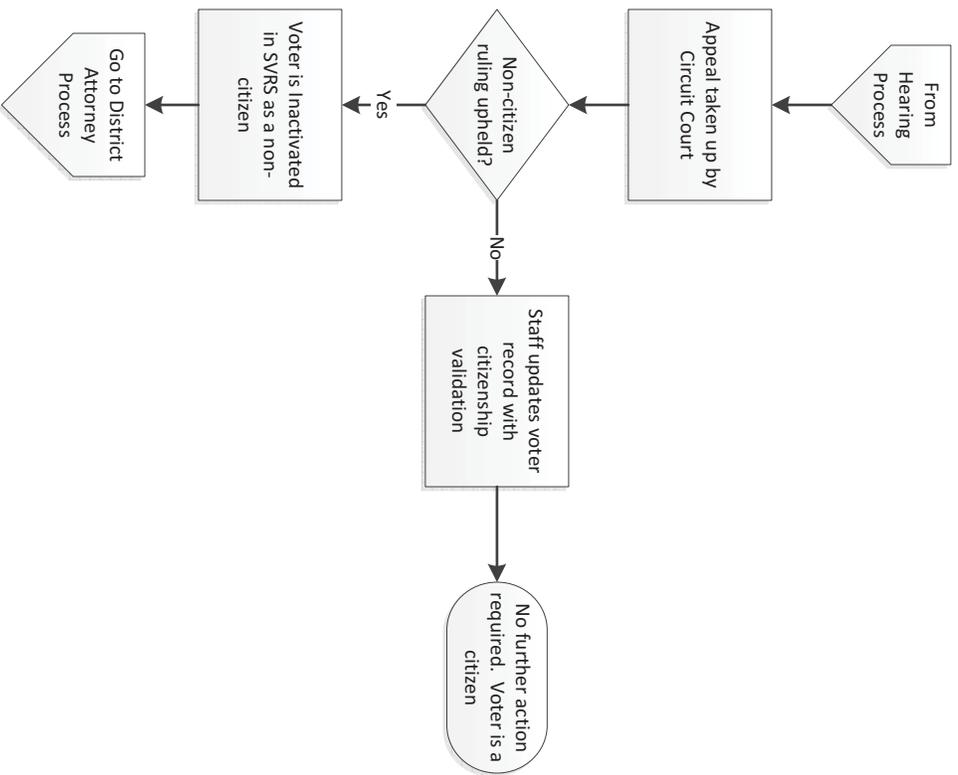
# Step 2 – SAVE Check Process

December 12, 2012









# Step 6 – District Attorney Process

December 12, 2012

