



Written by [Kurt Hyde](#) on June 8, 2009

## Will Noncitizens Be Allowed to Vote in Georgia?

Before the 2008 elections, the Mexican-American Legal Defense and Education Fund (MALDEF) and the ACLU sued Georgia to stop the state from verifying the citizenship status of people registering to vote. On October 16, 2008, U.S. District Court Judge Jack Camp ruled that not only was Georgia allowed to verify citizenship, but that it was required to do so to comply with the Help America Vote Act.



But Camp's decision was disregarded by the Obama Justice Department and the voter verification shortcircuited through federal maneuvering. Secretary Handel berated the U.S. Justice Department for opening the door to fraudulent voting: "DOJ has thrown open the door for activist organizations such as ACORN to register noncitizens to vote in Georgia's elections." She also provided evidence that vote fraud was already happening. The results of a mailing prior to the November 2008 general election to 4,771 voter-registration applicants whose records indicated they were not U.S. citizens indicated that as of March 2009, 2,148 of these applicants have still not resolved the question regarding their U.S. citizenship.

And contrary to claims by the ACLU, the voter-verification process did not result in citizens being unable to vote: "It is important to underscore that not a single person has come forward to say he or she could not vote because of the verification process."

Secretary Handel vowed to continue the fight for verification of citizenship of voter registrations. She said she will consider every option available to the state including the possibility of legal action.

If the state of Georgia does decide to pursue legal action to defend its right to verify citizenship on voter-registration applications, they will find support in the United States Constitution. In Article I, Section 4, the Constitution says, "The times, places and manner of holding elections, for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." The federal power described in this provision — to "make or alter" regulations pertaining to "the times, places and manner of holding elections," was clearly delegated to Congress, not to the president. (The DOJ is a cabinet-level position that answers to the president.)

Moreover, this power was to be used only in extraordinary circumstances necessary to the safety of the



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federal government, and not in a mode of prior restraint. This provision in the U.S. Constitution was troubling to many people at the initial founding of our Republic. The anti-Federalists (those people against ratifying the Constitution, fearing that it would give the national government too much power) even proposed an amendment curbing such authority unless the state in question was neglectful or was disabled by invasion or rebellion (*The Anti-Federalist Papers* by Ralph Ketchum, page 224). This proposed amendment was never passed; it was deemed unnecessary because of the intent of Article I, Section 4, which was explained in *The Federalist Papers*, notably *Federalist Paper #59* authored by Alexander Hamilton. Hamilton explained that this provision in the U.S. Constitution “reserved to the national authority a right to interpose whatever extraordinary circumstances might render that interposition necessary to its safety.” Hamilton added further, “Suppose an article had been introduced into the Constitution empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power and as a premeditated engine for the destruction of the State governments?”

The 14th Amendment, which federal courts have cited to rationalize rulings expanding federal powers over the states, provides: “No state shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States.” (Emphasis added.) Of course, “noncitizens” are not “citizens,” and the states cannot possibly “abridge the privileges or immunities of citizens of the United States” by taking precautions to prevent *noncitizens* from voting.

The states have the right to verify voter registrations, not only as they are submitted but also to verify them at any time to eliminate honest mistakes as well fraud. Purging fraudulent voter registrations has played a key role in American history in toppling corrupt politicians such as Boss Tweed of Tammany Hall infamy. If we want to protect ourselves from corrupt politicians and/or dishonest elections, we must jealously guard the right of the states to verify voter registrations.



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