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How This Immigration Lawyer Learned to Love Voter ID

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Imagine having just arrived as a legal immigrant to the United States, a bustling new world. With foreign passport and visa in hand, you go to your local department of motor vehicles office to obtain a state ID. To your surprise, a DMV official offers you the opportunity to become an organ donor and to register to vote.

You heard right. After presenting a foreign passport and temporary visa as identification, you are solicited for voter registration. From there, the well-intentioned but misguided DMV official hurriedly directs you to sign documents, including what you don't realize is a declaration of U.S. citizenship.

As a result of this frenzied process, you walk out of your local DMV, a proud new potential organ donor with state ID in hand. Within a few weeks you receive your voter-registration card in the mail, which you regard as official confirmation of your eligibility to vote. During the next election you happily go to your local polling place to vote, fulfilling what you see as your civic duty in your new homeland.

What you don't know is that your voter-registration card and your participation in a federal congressional election amount to an immigration kiss of death. You soon receive notice from the Department of Homeland Security of your impending deportation.

Sounds like an immigrant's worst nightmare, doesn't it? Unfortunately, thanks to the 1993 National Voter Registration Act—more commonly known as the "Motor Voter" law—it's a reality for many legal immigrants who arrive in the U.S. eager to start a new life. Motor Voter effectively does away with document requirements and incorporates a convenient voter-registration solicitation as part of the process of issuing a driver's license or state ID. Unfortunately, legal immigrants who mistakenly register to vote and then do so risk deportation.

One way to remedy this problem, and reduce intentional voter fraud, is for a state to require proof of citizenship before a resident can register to vote. That's exactly what Arizona did in 2004 with the passage of Proposition 200. But the federal government considers the Motor Voter law as supreme and a measure that trumps any state law with conflicting provisions.

Last month, in oral arguments before the Supreme Court (*Arizona v. Inter Tribal Council of Arizona*) the state of Arizona challenged the primacy of the National Voter Registration Act in regulating federal elections. A decision by the court is expected later this year.

Both sides of the debate present compelling arguments: Requiring proof of citizenship would no doubt guard against voter fraud but could also inconvenience or deter

The Supreme Court will soon decide on proof of citizenship as a requirement to vote. It would have helped my client.

legitimate voters. Yet witnessing firsthand how Motor Voter registration plays out for immigrants in Illinois and Indiana—like the scenario described earlier—I have come to see how a law like Arizona's, or at least some validation process, might be good for noncitizen immigrants.

Under Motor Voter, the mistaken issuance of a voter registration card tends to occur for two reasons: foreign nationals' understandable deference to uniformed DMV officials and the lack of an objective verification mechanism. A voter-registration process that lacks a validation component is dangerous to both innocent foreign nationals and to the electoral process.

In its Aug. 22, 2012, *Keathley v. Holder* decision, the Seventh U.S. Circuit Court of Appeals recognized how these Motor Voter dangers can tragically play out. The case addressed the plight of Elizabeth Keathley, the Filipina wife of a U.S. citizen who I have represented since 2007. In 2004, Ms. Keathley legally entered the U.S. with a temporary K-3 foreign-spouse visa and had already petitioned for permanent-residence status.

Shortly after arriving in the U.S., Ms. Keathley says she went to her local DMV in Bloomington, Ill., for the sole purpose of obtaining a state ID. After accepting organ-donor status, Ms. Keathley says she was briskly waved through the voter-registration

process, although she had already presented her Philippine passport and foreign-spouse visa as identification. Her impression was that she was no less eligible to register to vote than she was to sign up to be an organ donor or receive a state ID. She soon received her voter-registration card in the mail, which she saw as government confirmation of her eligibility to vote. Ms. Keathley proceeded to vote in a federal congressional election.

Some months later, at her final immigration interview, Ms. Keathley freely revealed her voting activity. Instead of being issued a green card, she received a notice from the Department of Homeland Security to appear for deportation. But after five years of litigation and defeats at various hearing levels, the Seventh Circuit granted Ms. Keathley a reprieve.

Chief Judge Frank H. Easterbrook, writing for the court, asserted that if the events surrounding Ms. Keathley's voter registration are true, "the Department of Homeland Security should give serious consideration to withdrawing its proposal that she be declared inadmissible and removed from the United States. A person who behaves with scrupulous honesty only to be misled by a state official should be as welcome in this country in 2012 as she was when she entered in 2004."

In other words, just as we would never ticket a motorist who is waved through a stop sign by a police officer, an otherwise law-abiding foreign national should not be deported after being waved through the voter-registration and voting process by government officials.

A legal mechanism requiring proof of citizenship for voter registration—such as Arizona's Prop. 200 or some other validation process—would have saved Ms. Keathley and our overburdened courts years of grief. One hopes the Supreme Court takes cases like hers into consideration when ruling on Prop. 200 and the alleged supremacy of the federal Motor Voter law.

Mr. Hanus, a Chicago immigration lawyer, has represented Elizabeth Keathley throughout her defense of removal proceedings, including before the Seventh U.S. Circuit Court of Appeals.