

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

KRIS W. KOBACH, KANSAS	)
SECRETARY OF STATE;	)
	)
KEN BENNETT, ARIZONA	)
SECRETARY OF STATE;	)
	)
THE STATE OF KANSAS;	)
	)
THE STATE OF ARIZONA;	)
	)
Plaintiffs,	)
vs.	)
	)
THE UNITED STATES ELECTION	)
ASSISTANCE COMMISSION;	)
	)
ALICE MILLER, in her capacity as the	)
ACTING EXECUTIVE DIRECTOR &	)
CHIEF OPERATING OFFICER OF THE	)
UNITED STATES ELECTION	)
ASSISTANCE COMMISSION;	)
	)
Defendants.	)
_____	)

Case No. 13-4095-EFM-DJW

Designation of Trial Location:  
Topeka, Kansas

**COMPLAINT**

COME NOW the above-named Plaintiffs, and for their Complaint against the United States Election Assistance Commission and Alice Miller, Acting Executive Director and Chief Operating Officer of the United States Elections Assistance Commission, hereby state and allege the following upon current information and belief:

***Introduction***

1. This is an action seeking a writ of mandamus, pursuant to 28 U.S.C. § 1361 and the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* (hereinafter “the APA”), to order the United States Election Assistance Commission (hereinafter “the EAC”) or its Acting Executive

Director Alice Miller (hereinafter “Miller”) to make modifications to the Kansas- and Arizona-specific instructions of the mail voter registration application form (hereinafter “the Federal Form”), which is developed by the EAC in consultation with the chief election officers of the several States pursuant to the National Voter Registration Act, 42 U.S.C. § 1973gg *et seq.* (hereinafter “the NVRA”), or to otherwise permit the States of Kansas and Arizona to require voter registration applicants utilizing the Federal Form to submit proof-of-citizenship documentation in accordance with Kansas and Arizona law. The current version of the Federal Form only requires a voter registration applicant to make a mere oath that the applicant is a United States citizen, while the State laws of Plaintiffs require that voter registration applicants utilizing the Federal Form also submit concrete documentation evidencing United States citizenship.

2. The EAC and Miller have refused to make modifications to the State-specific instruction of the Federal Form as requested by Plaintiffs, even though the proposed modifications are necessary due to changes in the State laws of the Plaintiffs. Pursuant to the NVRA, the EAC and Miller are under a nondiscretionary duty to make the proposed modifications to the Federal Form because the proposed modifications reflect the respective voter qualification and registration laws of Plaintiffs, and include State-specific instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs’ voter qualifications. This action therefore seeks a writ of mandamus ordering the EAC and Miller to make the modifications to the State-specific instructions of the Federal Form as requested by Plaintiffs.

3. This is also an action seeking declaratory judgment and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202, the APA, 5 U.S.C. § 500 *et seq.*, and the Tenth Amendment,

declaring that the Help America Vote Act of 2002 (hereinafter “HAVA”), 42 U.S.C. § 15301 *et seq.*, and the NVRA, 42 U.S.C. §§ 1973gg *et seq.*, are unconstitutional as applied by the EAC or as applied to Plaintiffs. As sovereign States, Plaintiffs have the constitutional right, power, and privilege to establish voting qualifications, including voter registration requirements. This power includes the power to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs’ voter qualifications.

4. Insofar as Plaintiffs have been precluded from obtaining modifications to their State-specific instruction on the Federal Form, while at the same time Plaintiffs are required under the NVRA to accept and use the Federal Form, HAVA and the NVRA are unconstitutional, as applied, in the following ways:

- a. The exercise of discretionary authority by the EAC, its officers, or its staff, in refusing to modify the State-specific instruction of the Federal Form as requested by Plaintiffs constitute unconstitutional Acts of Congress which are not authorized by one of the powers delegated to Congress in the Constitution, and are unconstitutional invasions of the provinces of State sovereignty in violation of the Tenth Amendment;
- b. To the extent the EAC’s lack of quorum precludes the EAC from modifying the State-specific instructions of the Federal Form as requested by Plaintiffs, the lack of quorum unconstitutionally prevents Plaintiffs, in violation of the Tenth Amendment, from exercising their constitutional right, power, and privilege of establishing and enforcing voting qualifications, including voter registration requirements;

- c. Insofar as HAVA and the NVRA, as applied by the EAC or as applied to Plaintiffs, preclude Plaintiffs from requiring Federal Form applicants to provide concrete evidence of citizenship, HAVA and the NVRA constitute unconstitutional Congressional Acts establishing voting qualifications or voter registration requirements which are not supported by a power specifically conferred upon Congress by the Constitution, and which invade the province of State sovereignty reserved by the Tenth Amendment.

5. The Supreme Court of the United States recently acknowledged the inviolable power of States to establish and enforce voting requirements, stating, “[s]ince the power to establish voting requirements is of little value without the power to enforce those requirements, ... it would raise *serious constitutional doubts* if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 2247, 2258-59 (2013) (emphasis added). The court further encouraged the present action by stating, “[s]hould the EAC’s inaction persist, [the States] would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate [their] citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include [the States’] concrete evidence requirement on the Federal Form.” *Inter Tribal Council*, 133 S.Ct. at 2260.

#### ***Parties***

6. Plaintiff Kris W. Kobach (hereinafter “Secretary Kobach”) is the duly-elected Secretary of State for the State of Kansas, which is a sovereign State in the United States of

America. Pursuant to Kansas Statutes Annotated (hereinafter “K.S.A.”) 25-2504, Secretary Kobach is the Chief Election Officer of the State of Kansas as that phrase is used in the NVRA.

7. Plaintiff Ken Bennett (hereinafter “Secretary Bennett”) is the duly-elected Secretary of State for the State of Arizona, which is a sovereign State in the United States of America. Pursuant to Arizona Revised Statutes (hereinafter “A.R.S.”) § 16-142, Secretary Bennett is the Chief Election Officer of the State of Arizona as that phrase is used in the NVRA.

8. The State of Kansas is a sovereign State in the United States of America.

9. The State of Arizona is a sovereign State in the United States of America.

10. Defendant The United States Election Assistance Commission is an agency of the United States, 42 U.S.C. §§ 15321 – 30, 42 U.S.C. § 1973gg-7, and is an “agency” as that term is use in the APA, 5 U.S.C. § 551(1). The EAC has an ongoing responsibility to develop the Federal Form, in consultation with the chief election officers of the States, for the registration of voters for elections for Federal office, 42 U.S.C. § 1973gg-7(a)(2).

11. Defendant Alice Miller is the Acting Executive Director and Chief Operating Officer of the EAC, and is named as a party in her official capacity.

### ***Jurisdiction and Venue***

12. This action is against the EAC, an agency of the United States, and against Miller, the Acting Executive Director of the EAC and an officer of the United States. This action arises under the EAC’s enabling statutes, 42 U.S.C. § 15321 *et seq.*, the NVRA, 42 U.S.C. § 1973gg *et seq.*, the APA, 5 U.S.C. § 500 *et seq.*, and the Tenth Amendment to the United States Constitution. This action is in the nature of mandamus to compel an officer or employee of the United States, or an agency thereof, to perform a duty owed to the Plaintiffs, as well as for

declaratory and injunctive relief. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, 1361, 1651, 2201, and 2202.

13. The relief requested herein is specifically authorized pursuant to 28 U.S.C. § 1651 (writs), 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (further relief), and 28 U.S.C. 2412 (costs and fees).

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1)(C) because Defendant Alice Miller is an officer or employee of the United States acting in her official capacity or under color of legal authority, Defendant EAC is an agency of the United States, Plaintiff Secretary Kobach and the State of Kansas are located in this judicial district, and no real property is involved in the action.

### ***Factual Background***

15. In 1993, the United States Congress passed and the President signed into law the NVRA. See 42 U.S.C. § 1973gg *et seq.* The various provisions of the NVRA were originally administered by the Federal Election Commission (hereinafter “the FEC”).

16. In 2002, Congress enacted HAVA, 42 U.S.C. § 15301 *et seq.*, and in so doing created the EAC, 42 U.S.C. § 15321 *et seq.*, an agency of the United States consisting of four Commissioners. Pursuant to HAVA, Congress transferred from the FEC to the EAC the responsibility of administering the NVRA. 42 U.S.C. § 15532.

17. Pursuant to HAVA, the President was required to appoint the original four members of the EAC Commission, by and with the advice of the Senate, within 120 days of the enactment of HAVA, and vacancies on the EAC Commission were required to be filled in the same manner in which the original appointments were made. 42 U.S.C. § 15323.

18. The NVRA requires each State to permit prospective voters to register to vote in elections for Federal office by any of three methods: simultaneously with a driver's license application, in person, or by mail. 42 U.S.C. § 1973gg-2(a).

19. Pursuant to the NVRA, the Federal Form shall include a statement that (a) specifies each eligibility requirement, including citizenship; (b) contains an attestation that the applicant meets each such requirement; and (c) requires the signature of the applicant, under penalty of perjury. 42 U.S.C. § 1973gg-7(b)(2). The NVRA does not require applicants utilizing the Federal Form to provide concrete evidence of citizenship.

20. A copy of the current Federal Form, accessed at [http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration\\_1209\\_en9242012.pdf](http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_1209_en9242012.pdf) on August 16, 2013, is attached hereto as "Exhibit 1," and is incorporated herein by reference.

21. The NVRA places upon the EAC the ongoing responsibility of developing the Federal Form, in consultation with the chief election officers of the States, for the registration of voters for elections for Federal office, 42 U.S.C. § 1973gg-7(a)(2), and in turn requires the States to accept and use the Federal Form for the registration of voters for elections for Federal office. 42 U.S.C. § 1973gg-4(a)(1).

22. Under the NVRA, the EAC is under a nondiscretionary duty, at the request of the States, to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of the States, and to include State-specific instructions that enable the States to obtain information the States deem necessary to assess the eligibility of voter registration applicants and to enforce the States' voter qualifications. See 42 U.S.C. §§ 1973gg-7(a)(2) and 1973gg-7(b)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

23. Pursuant to 42 U.S.C. § 15328, certain actions that the EAC is authorized to take under Chapter 146 of Title 42 of the United States Code, may be carried out only with the approval of at least three of its members.

24. Pursuant to 42 U.S.C. § 15324(a), the EAC shall have an Executive Director and a General Counsel, each appointed by the Commission.

25. There is established within the EAC the position of Chief Operating Officer, which officer serves under the Executive Director.

26. There is established within the EAC the Division of Research, Programs and Policy (hereinafter “the RPP”), which serves under the Chief Operating Officer.

27. The EAC has not had a quorum of commissioners since December 2010, and has not had any commissioners since December 2011. The EAC has not had an Executive Director since December 2011, and has not had a General Counsel since May 2012.

28. Plaintiffs state and allege on current information and belief that no Presidential nominations to the EAC are pending on the Executive Calendar of the United States Senate, and that the President has nominated only two individuals to serve as Commissioners on the EAC, and such nominations are pending in the Senate Committee of Rules and Administration, to-wit: PN538, Myrna Perez, of Texas, for a term expiring December 12, 2015 (received June 7, 2013), and PN537, Thomas Hicks, of Virginia, for a term expiring December 12, 2017 (received June 7, 2013), *vice* PN536, Thomas Hicks, of Virginia, for a term expiring December 12, 2013 (received June 7, 2013), which nominations will not establish a quorum of the EAC.

29. On November 9, 2011, Thomas Wilkey, then-Executive Director of the EAC, sent a memorandum (hereinafter “the Wilkey Memorandum”) to then-EAC Commissioners Donetta Davidson and Gineen Bresso. The Wilkey Memorandum was issued due to the lack of quorum



of commissioners on the EAC, and purports to implement a procedure for reviewing and processing State requests for modifications to the Federal Form. A copy of the Wilkey Memorandum is attached hereto as “Exhibit 2,” and is incorporated herein by reference.

30. Due to the lack of quorum of commissioners on the EAC, the Wilkey Memorandum purported to confer authority to the RPP to make modifications to the Federal Form at the request of States when the proposed modifications are required by a change in State law, including proposed modifications that clarify existing State law. The Wilkey Memorandum also stated: “Requests that raise issues of broad policy concern to more than one State will be deferred until the re-establishment of a quorum.”

31. Plaintiffs state and allege on current information and belief that subsequent to the Wilkey Memorandum, the EAC and the RPP have approved requests from various States for modifications to State-specific instructions on the Federal Form on the basis of the authority conferred to the RPP by the Wilkey Memorandum. These approved requests include requests similar to those made by Plaintiffs as described herein.

32. Plaintiffs state and allege on current information and belief that Defendant Miller and the RPP, and other staff of the EAC, have conducted the business and duties of the EAC without a quorum of EAC Commissioners since at least December 2010.

#### Kansas

33. Since Kansas became a State in 1861, eligibility to vote in any election has been conditioned upon United States citizenship. Kan. Const. art. V, § 1.

34. Since Kansas became a State in 1861, the Kansas Constitution has provided that “[t]he legislature shall provide by law for proper proofs of the right to suffrage.” Kan. Const. art. V, § 4.

35. Since 1996, Kansas statutory law has allowed individuals to register to vote using the Federal Form in addition to the Kansas state registration form approved by the Kansas secretary of state. See Section 7(a) of 1996 Kan. Sess. Laws Ch. 187, codified as K.S.A. 1996 Supp. 25-2309(a).

36. Although both Kansas and federal law require that individuals be citizens of the United States in order to register and vote, non-citizens have improperly registered to vote in Kansas and have unlawfully voted in Kansas elections.

37. In 2011, the Kansas legislature passed and the Kansas Governor signed into law HB 2067, the “Secure and Fair Elections Act,” which amended various Kansas statutes concerning elections in the State of Kansas. HB 2067 took effect on January 1, 2012.

38. Section 8(l) of HB 2067, codified as K.S.A. 25-2309(l), provides: “The county election officer or secretary of state’s office shall accept any completed application for registration, but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship.” The statute enumerates 13 different documents that constitute satisfactory evidence of citizenship.

39. Section 8(m) of HB 2067, codified as K.S.A. 25-2309(m), also allows an applicant to submit any other evidence that the applicant believed demonstrates the applicant’s United States citizenship, and provides for a procedure by which such other evidence may be assessed and accepted.

40. The proof of citizenship provisions of HB 2067 enable State election officials to assess the eligibility of voter registration applicants.

41. Pursuant to Section 8(u) of HB 2067, codified as K.S.A. 25-2309(u), the proof of citizenship requirement of HB 2067 took effect on January 1, 2013.

42. Pursuant to Section 8(n) of HB 2067, codified as K.S.A. 25-2309(n), persons who were properly registered to vote in Kansas prior to January 1, 2013, are not required to submit evidence of citizenship.

43. On August 9, 2012, the Kansas Secretary of State's Office sent a letter to the EAC requesting that the Kansas-specific instructions for the Federal Form be modified by the EAC in three ways. A copy of this letter is attached hereto as "Exhibit 3," and is incorporated herein by reference.

44. The August 9, 2012, letter to the EAC requested that the Kansas-specific instruction for the Federal Form be modified to change the voter registration deadline from 15 days before the election to 21 days before the election. This request was made due to a change in Kansas law.

45. The August 9, 2012, letter to the EAC also requested that the Kansas-specific instruction for the Federal Form be modified by deleting the words "for mental incompetence" from the portion of the instruction stating that to register to vote in Kansas an applicant must not be excluded from voting by a court of competent jurisdiction. This request was made to clarify existing Kansas law under K.S.A. 25-2316c(f).

46. The August 9, 2012, letter to the EAC also requested that the Kansas-specific instructions for the Federal Form be modified by the EAC to reflect changes in Kansas law resulting from the passage of HB 2067. This letter requested the following proposed instruction be added to the Kansas-specific instructions on the Federal Form: "An applicant must provide qualifying evidence of U.S. citizenship prior to the first election day after applying to register to vote."

47. On October 11, 2012, Defendant Miller sent a letter to the Kansas Secretary of State's Office, which indicated that the requests for modification of the Kansas-specific instructions of the Federal Form relating to the voter registration deadline and requesting deletion of the words "for mental incompetence" had been approved subject to review by legal counsel. A copy of this letter is attached hereto as "Exhibit 4," and is incorporated herein by reference.

48. The October 11, 2012, letter further indicated that no action would be taken by the EAC on the request for modification of the Kansas-specific instruction of the Federal Form relating to proof of citizenship documentation. The letter indicated that this request "appears to have broad policy impact and would require consideration and approval of the EAC Commissioners. The authority of staff to modify the state instructions is limited to issues that do not have any policy impact." The letter noted that the EAC was without any Commissioners at the time, and therefore no action be taken by the EAC regarding this request.

49. On June 18, 2013, Secretary Kobach sent a letter to the EAC renewing Kansas's request that the Kansas-specific instructions be modified to include an instruction reflecting Kansas's law requiring that proof of citizenship documentation be submitted with voter registration applications. This renewed request was made in light of the decision of the United States Supreme Court in *Inter Tribal Council*, 133 S.Ct. at 2258-60. A copy of this letter is attached hereto as "Exhibit 5," and is incorporated herein by reference.

50. On July 31, 2013, Defendant Miller sent a letter to Secretary Kobach in which Miller again informed Secretary Kobach that the EAC could not process Kansas' request to modify in the Federal Form to reflect Kansas's proof of citizenship requirement due to a lack of a quorum on the Commission. In this letter, Miller stated that staff of the EAC is authorized to

process State requests to modify State-specific instructions on the Federal Form, but that according to procedures then in place EAC staff must defer determination on Kansas's request until the EAC has a quorum because the request raises "issues of broad policy concern to more than one state." A copy of this letter is attached hereto as "Exhibit 6," and is incorporated herein by reference.

51. The July 31, 2013, letter cited the Wilkey Memorandum as authority for the ability of EAC staff to process State requests for modifications to the Federal Form as well as for the policy to defer requests raising "issues of broad policy concern to more than one state" until the EAC has a quorum.

52. The July 31, 2013, letter from the EAC also suggested that the June 18, 2013, letter from the Kansas Secretary of State's Office indicated that Kansas would not accept and use the Federal Form without proper citizenship documentation.

53. On August 2, 2013, Secretary Kobach sent a letter to the EAC clarifying to the EAC that Kansas will accept and use the Federal Form submitted without proof of citizenship documentation to register voters for elections for Federal office until the EAC adds the requested Kansas-specific instruction to the Federal Form or until Kansas is otherwise relieved of that duty by a court of competent jurisdiction. This letter further clarified that once the Kansas-specific instruction was added, the Federal Form would be accepted for registering voters for both Federal and State elections. A copy of this letter is attached hereto as "Exhibit 7," and is incorporated herein by reference.

54. The August 2, 2013, letter also made the following modification to the proposed Kansas-specific instruction to remove a possible ambiguity in the language of the proposed

instruction: “To cast a regular ballot an applicant must provide evidence of U.S. citizenship prior to the first election day after applying to register to vote.”

55. On August 6, 2013, Defendant Miller sent a letter to Secretary Kobach in which Miller again informed Secretary Kobach that the EAC could not process Kansas’ request to modify in the Federal Form to reflect the Kansas proof of citizenship requirement due to a lack of a quorum on the Commission. This letter again stated that according to procedures then in place EAC staff must defer determination on Kansas’s request until the EAC has a quorum because the request raises “issues of broad policy concern to more than one state.” A copy of this letter is attached hereto as “Exhibit 8,” and is incorporated herein by reference.

56. The August 6, 2013, letter again cited the Wilkey Memorandum as authority for the ability of EAC staff to process State requests for modifications to the Federal Form as well as for the policy to defer requests raising “issues of broad policy concern to more than one state” until the EAC has a quorum.

57. The August 6, 2013, letter from the EAC to the Kansas Secretary of State’s Office constitutes final agency action.

#### Arizona

58. Since Arizona became a State in 1912, eligibility to vote in any election has been conditioned upon United States citizenship. Ariz. Const. art. VII, § 2; A.R.S. § 16-101(A)(1).

59. The Arizona Constitution provides that, “[t]here shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.” Ariz. Const. art. VII, § 12.

60. Although both Arizona and federal law require that individuals be citizens of the United States in order to register and vote, non-citizens have improperly registered to vote in Arizona and have unlawfully voted in Arizona elections.

61. In 2004, Arizona voters passed Proposition 200, a citizens' initiative, declaring that "illegal immigrants have been given a safe haven in this state with the aid of identification cards that are issued without verifying immigration status, and that this conduct... demeans the value of citizenship." The initiative was designed in part "to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day." *Purcell v. Gonzalez*, 549 U.S. 1, 2, 127 S.Ct. 5 (2006). A copy of Proposition 200 is attached hereto as "Exhibit 9," and is incorporated herein by reference.

62. One of Proposition 200's provisions, codified as A.R.S. § 16-166, required prospective voters to provide satisfactory evidence of United States citizenship in order to register to vote.

63. Proposition 200, codified as A.R.S. § 16-166(F), permits a variety of documents and identification numbers to be used as evidence of citizenship.

64. The proof-of-citizenship provisions of Proposition 200 enable State election officials to assess the eligibility of voter registration applicants.

65. Following approval of Proposition 200 by Arizona voters, the Arizona Attorney General submitted Proposition 200 to the U.S. Department of Justice for preclearance under Section 5 of the Voting Rights Act. In that submission, Arizona specifically stated that the measure would "require applicants registering to vote to provide evidence of United States citizenship with the application."

66. The Department of Justice precleared Proposition 200 on January 24, 2005.

67. On December 12, 2005, Arizona, through the Secretary of State's Office, requested the EAC to apply Arizona state policy derived from Proposition 200 to the state-specific instructions for the Federal Form.

68. On March 6, 2006, Thomas Wilkey, then-Executive Director of the EAC, wrote to then-Arizona Secretary of State Jan Brewer, stating that Federal law set forth in the NVRA and HAVA preempted Arizona's statutory requirement that applicants submit proof of citizenship with their registration forms. As a result, the EAC refused to include a proof of citizenship requirement in the Arizona-specific instructions for the Federal Form. Plaintiffs state and allege on current information and belief that Mr. Wilkey made this decision unilaterally and not with the agreement of a minimum of three Commissioners. A copy of Mr. Wilkey's March 6, 2006, letter is attached hereto as "Exhibit 10," and is incorporated herein by reference.

69. On March 13, 2006, then-Secretary Brewer wrote to Paul DeGregorio, then-Chairman of the EAC, to request reconsideration of Mr. Wilkey's decision. A copy of this letter is attached hereto as "Exhibit 11," and is incorporated herein by reference.

70. On May 9, 2006, a group of individual Arizona residents filed suit seeking to enjoin the voting provisions of Proposition 200 in the U.S. District Court for the District of Arizona. *Gonzalez v. Arizona*, D. Ariz. Cause No. CV 06-1268-PHX-ROS. A separate complaint was filed by the Inter Tribal Council of Arizona, Inc. (hereinafter "ITCA"). These two cases were later consolidated (hereinafter "*Gonzalez/ITCA*").

71. On June 19, 2006, the district court issued an opinion and order in *Gonzalez/ITCA*, denying the plaintiffs' request for a temporary restraining order preventing Arizona officials from enforcing Proposition 200. The opinion and order provided:

Determining whether an individual is a United States citizen is of paramount importance when determining his or her eligibility to vote. In



fact, the NVRA repeatedly mentions that its purpose and goal is to increase registration of “eligible citizens.” 42 U.S.C. § 1973gg(b)(1)-(2). Providing proof of citizenship undoubtedly assists Arizona in assessing the eligibility of applicants. Arizona’s proof of citizenship requirement does not conflict with the plain language of the NVRA. (Dkt. 68 at 9.)

72. On June 20, 2006, then-Secretary Brewer sent a letter to the EAC renewing Arizona’s request that the EAC approve the Arizona-specific instructions giving effect to Proposition 200’s proof-of-citizenship requirement. A copy of this letter is attached hereto as “Exhibit 12,” and is incorporated herein by reference.

73. Then-EAC Chair DeGregorio, in response to then-Secretary Brewer’s June 20, 2006 letter and the district court order, submitted a Tally Vote to change the state-specific instructions. The Tally vote failed on a 2 to 2 vote, which vote was accompanied by position statements by EAC Chairman Paul DeGregorio and Vice Chairman Ray Martinez III. A copy of the Tally Vote, including the position statements, is attached hereto as “Exhibit 13,” and is incorporated herein by reference.

74. The *Gonzalez/ITCA* consolidated case proceeded through the courts and went twice through the Ninth Circuit and the U.S. Supreme Court. On June 17, 2013, the Supreme Court issued its Opinion in *Inter Tribal Council*, 133 S.Ct. 2247. The court held that Arizona must accept and use the Federal Form to register voters for elections for federal office, but that nothing precluded Arizona from renewing its request that the EAC modify the Federal Form to include the Arizona-specific instruction and challenging the EAC’s rejection of that request under the APA. *Inter Tribal Council*, 133 S.Ct. at 2259-60.

75. On June 19, 2013, Secretary Bennett wrote to Defendant Miller to renew Arizona’s request that the EAC modify the Federal Form to include the Arizona-specific instructions regarding Arizona’s proof of citizenship requirement as codified in A.R.S. § 16-166. A copy of this letter is attached hereto as “Exhibit 14,” and is incorporated herein by reference.

76. On July 22, 2013, counsel for ITCA submitted a letter to Defendant Miller urging the EAC to reject Arizona's request. A copy of that letter is attached hereto as "Exhibit 15," and is incorporated herein by reference.

77. On July 26, 2013, Arizona Attorney General Thomas C. Horne wrote to Defendant Miller to join in Secretary Bennett's request that the EAC modify the Federal Form to include Arizona's proof-of-citizenship requirement in the Arizona-specific instructions of the Federal Form. Attorney General Horne noted that the EAC had recently approved the State of Louisiana's request for state-specific instructions that required applicants that do not have a Louisiana driver's license, a Louisiana special identification card, or a social security number to attached additional documentation to the Federal Form pursuant to Louisiana statutes. Attorney General Horne further encouraged the EAC to treat Arizona fairly in light of its approval of Louisiana's request. A copy of Attorney General Horne's July 26, 2013, letter is attached hereto as "Exhibit 16," and is incorporated herein by reference.

78. On August 13, 2013, Defendant Miller sent a letter to Secretary Bennett in which she informed Secretary Bennett that the EAC could not process Arizona's request to modify the Federal Form to reflect Arizona's proof of citizenship requirement due to a lack of a quorum on the Commission. The letter cited the Wilkey Memorandum as authority for the ability of EAC staff to process State requests for modifications to the Federal Form as well as for the policy to defer requests raising "issues of broad policy concern to more than once state" until the EAC has a quorum. A copy of the August 13, 2013, letter is attached hereto as "Exhibit 17," and is incorporated herein by reference.

79. The August 13, 2013, letter from the EAC to the Arizona Secretary of State's Office constitutes final agency action.

### *Causes of Action*

#### Cause I: Agency Action Unlawfully Withheld or Unreasonably Delayed

80. Plaintiffs hereby incorporate all of the foregoing allegations into the allegations supporting Cause I.

81. As sovereign States in the United States of America, Plaintiffs have the constitutional right, power, and privilege to establish voting qualifications, including voter registration requirements. *See* U.S. Const. article I, § 2, cl. 1; U.S. Const. amend. X and XVII. This power includes the power to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs' voter qualifications. *Inter Tribal Council*, 133 S.Ct. at 2258-59; 42 U.S.C. § 1973gg(b)(2).

82. A mere oath without concrete evidence of citizenship, as allowed for by the current version of the Federal Form, does not suffice to effectuate the State laws of Plaintiffs or enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter qualifications. The EAC is therefore under a nondiscretionary duty to include Plaintiffs' concrete evidence requirements on the Federal Form. Justice Scalia, who authored the Opinion of the Court in *Inter Tribal Council*, specifically noted during oral argument that a mere oath is virtually meaningless and does not enable the States to ensure that a voter registration applicant is actually qualified to vote: "The proof [the EAC] requires is simply the statement, 'I'm a citizen.' That is proof?... That is not proof at all... Under oath is not proof at all. It's just a statement." Transcript of oral argument, p. 44.

83. Pursuant to the NVRA, Plaintiffs may request that the EAC alter the Federal Form to reflect Plaintiffs' voter qualification and registration laws and to include information the Plaintiffs deem necessary to enable Plaintiffs to assess the eligibility of voter registration

applicants and to enforce Plaintiffs' voter qualifications. 42 U.S.C. § 1973gg-7(a)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

84. Pursuant to the NVRA, the EAC is under a nondiscretionary duty, at the request of Plaintiffs, to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of the Plaintiff States, and to include State-specific instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs' voter qualifications. See 42 U.S.C. §§ 1973gg-7(a)(2) and 1973gg-7(b)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

85. The APA provides that "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b).

86. The APA provides that this Court "shall compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

87. Pursuant to the APA, "agency action" includes the whole or a part of an agency rule, order, relief, or the equivalent or denial thereof, and includes an agency's failure to act. 5 U.S.C. § 551(13).

88. The letters from the EAC to Plaintiffs, denying Plaintiffs requests to modify the Federal Form, constitute final agency actions.

89. To the extent that the NVRA or HAVA provide that the EAC's lack of quorum precludes the EAC from modifying the State-specific instructions of the Federal Form as requested by Plaintiffs, while at the same time requiring Plaintiffs to accept and use the Federal Form to register individuals to vote, the NVRA or HAVA result in an unconstitutional invasion

of the province of State sovereignty in violation of Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.

90. The EAC's and the RPP's failure to modify the State-specific instructions on the Federal Form as requested by Plaintiffs constitutes agency action unlawfully withheld or unreasonably delayed under the APA, 5 U.S.C. § 706(1).

Cause II: Agency Action, Findings, and Conclusions  
Contrary to Constitutional Right, Power, Privilege, or Immunity

91. Plaintiffs hereby incorporate all of the foregoing allegations into the allegations supporting Cause II.

92. The APA provides that this Court “shall hold unlawful and set aside agency action, findings, and conclusions found to be... contrary to constitutional right, power, privilege, or immunity.” 5 U.S.C. § 706(2)(B).

93. Pursuant to the APA, “agency action” includes the whole or a part of an agency rule, order, relief, or the equivalent or denial thereof, and includes an agency's failure to act. 5 U.S.C. § 551(13).

94. The letters from the EAC to Plaintiffs, denying Plaintiffs requests to modify the Federal Form, constitute final agency actions.

95. As sovereign States in the United States of America, Plaintiffs have the constitutional right, power, and privilege of establishing voting qualifications, including voter registration requirements. *See* U.S. Const. article I, § 2, cl. 1; U.S. Const. amend. X and XVII.

96. The constitutional rights, powers, and privileges of establishing voter qualifications, including voter registration requirements, are incidents of State sovereignty protected by Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment. This power includes the power to obtain information the States deem necessary to

assess the eligibility of voter registration applicants and to enforce their voter qualifications. *Inter Tribal Council*, 133 S.Ct. at 2258-59.

97. A mere oath without concrete evidence of citizenship, as allowed for by the current version of the Federal Form, does not suffice to effectuate the State laws of Plaintiffs or enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter qualifications. Justice Scalia, who authored the Opinion of the Court in *Inter Tribal Council*, specifically noted during oral argument that a mere oath is virtually meaningless and does not enable the States to ensure that a voter registration applicant is actually qualified to vote: “The proof [the EAC] requires is simply the statement, ‘I’m a citizen.’ That is proof?... That is not proof at all... Under oath is not proof at all. It’s just a statement.” Transcript of oral argument, p. 44.

98. Under the NVRA and the Tenth Amendment, the EAC is under a nondiscretionary duty, at the request of Plaintiffs, to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of Plaintiffs, and to include State-specific instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs’ voter qualifications. See 42 U.S.C. §§ 1973gg-7(a)(2) and 1973gg-7(b)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

99. The EAC’s and the RPP’s failure to modify the State-specific instructions on the Federal Form as requested by Plaintiffs constitutes agency action contrary to the constitutional rights, power, and privileges of Plaintiffs, under the Tenth Amendment, to establish voter qualifications, including voter registration requirements, to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter

qualifications, and otherwise infringes upon incidents of State sovereignty of the Plaintiff States, under the APA, 5 U.S.C. § 706(2)(B).

Cause III: Agency Action, Findings, and Conclusions that are  
Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law

100. Plaintiffs hereby incorporate all of the foregoing allegations into the allegations supporting Cause III.

101. The APA provides that this Court “shall hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

102. Pursuant to the APA, “agency action” includes the whole or a part of an agency rule, order, relief, or the equivalent or denial thereof, and includes an agency’s failure to act. 5 U.S.C. § 551(13).

103. The letters from the EAC to Plaintiffs, denying Plaintiffs requests to modify the Federal Form, constitute final agency actions.

104. The agency action taken by the EAC pursuant to the Wilkey Memorandum vested nondiscretionary authority in the RPP to make modifications to the Federal Form at the request of States when the proposed modifications are required by a change in State law, including proposed modifications that clarify existing State law.

105. To the extent that the Wilkey Memorandum vested discretionary authority in the RPP to refuse to make modifications to the Federal Form at the Plaintiffs’ request, the Wilkey Memorandum constitutes final agency action that was arbitrary, capricious, an abuse of discretion, and was otherwise made not in accordance with law.

106. By their requests to the EAC, Plaintiffs sought to modify their respective State-specific instructions on the Federal Form to reflect the State law of Plaintiffs, and to include

instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs' voter qualifications. Because these requests concern only Plaintiffs' State-specific instructions, these requests do not "raise issues of broad policy concern to more than one State."

107. In 2012, the EAC approved a modification to the Louisiana-specific instructions of the Federal Form similar to the proposed instructions of Plaintiffs, and the EAC's failure to include Plaintiffs' proposed State-specific instruction therefore constitutes agency action that is arbitrary, capricious, and an abuse of discretion. In *Inter Tribal Council*, the United States Supreme Court specifically noted that it would be arbitrary to refuse to include Arizona's proposed instruction when the EAC has accepted a similar instruction requested by Louisiana. *Inter Tribal Council*, 133 S.Ct. at 2260.

108. The EAC's and the RPP's failure to modify the State-specific instructions on the Federal Form as requested by Plaintiffs constitutes agency action that was arbitrary, capricious, an abuse of discretion, and was otherwise made not in accordance with law under the APA, 5 U.S.C. § 706(2)(A).

Cause IV: Agency Action, Findings, and Conclusions that were  
in Excess of Statutory Jurisdiction, Authority, or Limitations, or Short of Statutory Right

109. Plaintiffs hereby incorporate all of the foregoing allegations into the allegations supporting Cause IV.

110. The APA provides that this Court "shall hold unlawful and set aside agency action, findings, and conclusions found to be... in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

111. Pursuant to the NVRA, the EAC is under a nondiscretionary duty to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and



registration laws of Plaintiffs, and to include State-specific instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs' voter qualifications. See 42 U.S.C. §§ 1973gg-7(a)(2) and 1973gg-7(b)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

112. Pursuant to the NVRA, the EAC and the RPP do not have the authority or right to decline Plaintiffs' requests to include State-specific instructions on the Federal Form that reflect the respective voter qualification and registration laws of Plaintiffs, or that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter qualifications.

113. To the extent the EAC interprets its own authority under the NVRA as sufficient to effectively prevent a State from requiring voter registration applicants to provide concrete evidence of citizenship, such an interpretation assumes that Congress has delegated authority to the EAC that Congress itself does not possess. Congress may not delegate power to an administrative agency that Congress itself does not have. Thus, such an interpretation would be in excess of statutory authority.

114. The EAC's and the RPP's failure to modify the State-specific instructions on the Federal Form as requested by Plaintiffs constitutes agency action that was in excess of statutory jurisdiction, authority, limitations, or short of statutory right under the APA, 5 U.S.C. § 706(2)(C).

#### Cause V: The Tenth Amendment

115. Plaintiffs hereby incorporate all of the foregoing allegations into the allegations supporting Cause V.

116. The Constitution established a system of dual sovereignty in which the States surrendered many of their powers to the Federal Government, but retained a residual and inviolable sovereignty.

117. Residual State sovereignty is implicit in the Constitution's conferral upon Congress of not all governmental powers, but only discrete, enumerated ones, which implication was rendered express by the Tenth Amendment's assertion that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

118. The Federal Government is a government of enumerated powers with judicially enforceable limits, which means that Congress has no power to act unless the Constitution authorizes it to do so.

119. An act of Congress not supported by a power specifically conferred upon it by the Constitution is unconstitutional and is an invasion of the province of State sovereignty in violation of the Tenth Amendment. Further, an agency created by Congress cannot exercise powers that Congress itself does not possess.

120. As sovereign States in the United States of America, Plaintiffs have the constitutional right, power, and privilege to establish voting qualifications, including voter registration requirements. *See* U.S. Const. article I, § 2, cl. 1; U.S. Const. amend. X and XVII. This power includes the power to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter qualifications. *Inter Tribal Council*, 133 S.Ct. at 2258-59; 42 U.S.C. § 1973gg(b)(2).

121. No enumerated power in Article I, or anywhere else in the Constitution, confers upon Congress the power to establish voting qualifications or voter registration requirements, or

the power to prohibit, limit, or hinder the power of the States to establish voter qualifications or voter registration requirements. *Inter Tribal Council*, 133 S.Ct. at 2258.

122. No enumerated power in Article I, or anywhere else in the Constitution, confers upon Congress the power to prohibit, limit, or hinder the power of the States to obtain information the States deem necessary to assess the eligibility of voter registration applicants or to enforce their voter qualifications. *Inter Tribal Council*, 133 S.Ct. at 2258-59.

123. Pursuant to the NVRA, the EAC is under a nondiscretionary duty to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of Plaintiffs, and to include State-specific instructions that enable Plaintiffs to obtain information Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce Plaintiffs' voter qualifications. See 42 U.S.C. §§ 1973gg-7(a)(2) and 1973gg-7(b)(2); *Inter Tribal Council*, 133 S.Ct. at 2259.

124. To the extent that the NVRA vests discretionary authority with the EAC to refuse to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of Plaintiffs, while at the same time requiring that Plaintiffs accept and use the Federal Form to register individuals to vote, the NVRA is an unconstitutional Act of Congress, as applied by the EAC or as applied to Plaintiffs, which is not authorized by one of the powers delegated to Congress in the Constitution, and is an unconstitutional invasion of the province of State sovereignty in violation of Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.

125. To the extent that the NVRA vests discretionary authority with the EAC to refuse to include State-specific instructions on the Federal Form that Plaintiffs deem necessary to enable Plaintiffs to assess the eligibility of voter registration applicants and to enforce their voter

qualifications, while at the same time requiring that Plaintiffs accept and use the Federal Form to register individuals to vote, the NVRA is an unconstitutional Act of Congress, as applied by the EAC or as applied to Plaintiffs, which is not authorized by one of the powers delegated to Congress in the Constitution, and is an unconstitutional invasion of the province of State sovereignty in violation of Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.

126. To the extent that HAVA or the NVRA provide that the EAC's lack of quorum precludes the EAC from modifying the State-specific instructions of the Federal Form as requested by Plaintiffs, while at the same time requiring Plaintiffs to accept and use the Federal Form to register individuals to vote, the NVRA or HAVA result in an unconstitutional invasion of the province of State sovereignty, as applied by the EAC or as applied to Plaintiffs, in violation of Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment.

127. As applied by the EAC or as applied to Plaintiffs, the NVRA effectively compels Plaintiffs to choose between two options, neither of which Congress has the constitutional authority to enact. Either: (1) Plaintiffs must abandon their proof-of-citizenship requirements for Federal Form applicants and allow such applicants to register to vote for federal elections but not state elections; or (2) Plaintiffs must abandon their proof-of-citizenship requirements altogether, and allow applicants using any registration form to register to vote for both federal and state elections.

128. Because “[a] choice between two unconstitutionally coercive regulatory techniques is no choice at all,” *New York v. United States*, 505 U.S. 144, 176, 112 S.Ct. 2408, 2428 (1992), the EAC has invaded the province of State sovereignty and has unconstitutionally

commandeered Plaintiffs into enacting a federal voter eligibility and registration policy which Congress has not authority to enact in the first place.

***Prayer for Relief***

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Find, hold unlawful, and set aside the EAC's and the RPP's findings and decisions, or alternatively, the EAC's and the RPP's failure to modify State-specific instructions of the Federal Form as requested by Plaintiffs as agency action unlawfully withheld or unreasonably delayed; as agency action that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; as agency action contrary to constitutional right, power, privilege, or immunity; and as agency action in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

B. Issue a writ of mandamus ordering the EAC to modify the State-specific instructions of the Federal Form as requested by the respective Plaintiffs;

C. Declare that, to the extent that the NVRA vests discretionary authority with the EAC to refuse to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of the States, while at the same time requiring that the States accept and use the Federal Form to register individuals to vote, the NVRA is unconstitutional as applied by the EAC or as applied to Plaintiffs;

D. Declare that, to the extent that the NVRA vests discretionary authority with the EAC to refuse to include State-specific instructions on the Federal Form that the States deem necessary to enable the States to assess the eligibility of voter registration applicants and to enforce their voter qualifications, while at the same time requiring that the States accept and use

the Federal Form to register individuals to vote, the NVRA is unconstitutional as applied by the EAC or as applied to Plaintiffs;

E. Declare that the Wilkey Memorandum is an unlawful regulation promulgated without observance of the requirements of the APA;

F. Declare that, to the extent that the Wilkey Memorandum vested discretionary authority to the RPP to refuse to make modifications to the Federal Form at the request of States, the Wilkey Memorandum constitutes agency action that was arbitrary, capricious, an abuse of discretion, and was otherwise made not in accordance with law;

G. Declare that, to the extent that HAVA or the NVRA provide that the EAC's lack of quorum precludes the EAC from modifying the State-specific instructions of the Federal Form as requested by the States, while at the same time requiring that the States accept and use the Federal Form to register individuals to vote, HAVA and the NVRA result in an unconstitutional invasion of the province of State sovereignty, as applied by the EAC or as applied to Plaintiffs, in violation of Article I, § 2 of the Constitution, the Tenth Amendment, and the Seventeenth Amendment;

H. Enjoin the EAC and any employee or officer acting on the EAC's behalf from exercising discretion to refuse, at the request of Plaintiffs, to modify the State-specific instructions of the Federal Form to reflect the respective voter qualification and registration laws of the States;

I. Enjoin the EAC and any employee or officer acting on the EAC's behalf from exercising discretion to refuse, at the request of Plaintiffs, to include State-specific instructions on the Federal Form that Plaintiffs deem necessary to assess the eligibility of voter registration applicants and to enforce their voter qualifications.

J. Award Plaintiffs their costs and grant such other relief as the Court may deem just and proper.

Respectfully Submitted,

s/ Thomas E. Knutzen

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Dated: August 21, 2013

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

KRIS W. KOBACH, KANSAS ) SECRETARY OF STATE, et al., ) ) Plaintiffs, ) vs. )		Case No. <u>13-4095-EFM-DJW</u>
THE UNITED STATES ELECTION ) ASSISTANCE COMMISSION, et al., ) ) Defendants. ) _____ )		

**EXHIBIT INDEX FOR EXHIBITS OF THE COMPLAINT**

<i>Exhibit</i>	<i>Description</i>
1	Mail Voter Registration Form ( <i>i.e.</i> , “Federal Form”) as of August 16, 2013
2	November 9, 2011, Memorandum by then-Executive Director of the EAC, Thomas Wilkey ( <i>i.e.</i> , “Wilkey Memorandum)
3	August 9, 2012, letter from the Kansas Secretary of State’s Office to the EAC
4	October 11, 2012, letter from Defendant Miller to the Kansas Secretary of State’s Office
5	June 18, 2013, letter from the Kansas Secretary of State’s Office to the EAC
6	July 31, 2013, letter from Defendant Miller to the Kansas Secretary of State’s Office
7	August 2, 2013, letter from the Kansas Secretary of State’s Office to the EAC
8	August 6, 2013, letter from Defendant Miller to the Kansas Secretary of State’s Office
9	Arizona’s Proposition 200
10	March 6, 2006, letter from then-Executive Director of the EAC, Thomas Wilkey, to the Arizona Secretary of State’s Office
11	March 13, 2006, letter from the Arizona Secretary of State’s Office to Paul DeGregorio, then-Chariman of the EAC



- 12 June 20, 2006, letter from the Arizona Secretary of State's Office to the EAC
- 13 July 11, 2006, Tally Vote by the EAC concerning Arizona's request to modify the Arizona-specific instructions of the Federal Form
- 14 June 19, 2013, letter from the Arizona Secretary of State's Office to the EAC
- 15 July 22, 2013, letter from counsel for ITCA to the EAC
- 16 July 26, 2013, letter from the Arizona Attorney General's Office to the EAC
- 17 August 13, 2013, letter from Defendant Miller to the Arizona Secretary of State's Office

Respectively Submitted,

s/ Thomas E. Knutzen

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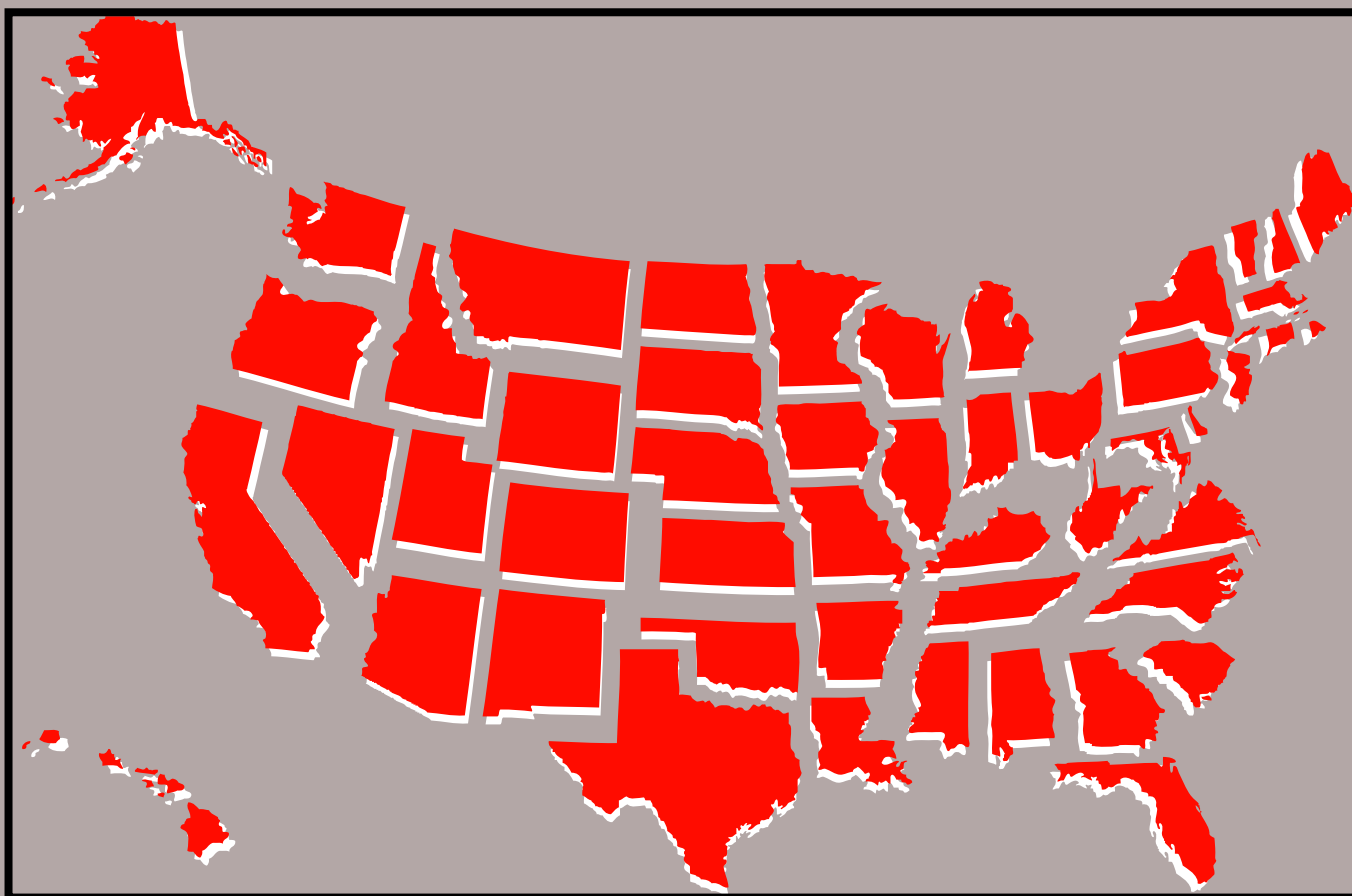
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***Secretary of State, and for***

***The State of Arizona***

# **Register To Vote In Your State By Using This Postcard Form and Guide**



## **For U.S. Citizens**

# General Instructions

## Who Can Use this Application

If you are a U.S. citizen who lives or has an address within the United States, you can use the application in this booklet to:

- Register to vote in your State,
- Report a change of name to your voter registration office,
- Report a change of address to your voter registration office, or
- Register with a political party.

## Exceptions

Please do not use this application if you live outside the United States and its territories and have no home (legal) address in this country, *or* if you are in the military stationed away from home. Use the Federal Postcard Application available to you from military bases, American embassies, or consular offices.

**New Hampshire** town and city clerks will accept this application only as a request for their own absentee voter mail-in registration form.

**North Dakota** does not have voter registration.

**Wyoming** law does not permit mail registration.

## How to Find Out If You Are Eligible to Register to Vote in Your State

Each State has its own laws about who may register and vote. Check the information under your State in the State Instructions. All States require that you be a United States citizen by birth or naturalization to register to vote in federal and State elections. Federal law makes it illegal to falsely claim U.S. citizenship to register to vote in any federal, State, or local election. You **cannot** be registered to vote in more than one place at a time.

## How to Fill Out this Application

Use both the Application Instructions and State Instructions to guide you in filling out the application.

- First, read the Application Instructions. These instructions will give you important information that applies to everyone using this application.
- Next, find your State under the State Instructions. Use these instructions to fill out Boxes 6, 7, and 8. Also refer to these instructions for information about voter eligibility and any oath required for Box 9.

## When to Register to Vote

Each State has its own deadline for registering to vote. Check the deadline for your State on the last page of this booklet.

## How to Submit Your Application

Mail your application to the address listed under your State in the State Instructions. Or, deliver the application in person to your local voter registration office. The States that are required to accept the national form will accept copies of the application printed from the computer image on regular paper stock, signed by the applicant, and mailed in an envelope with the correct postage.

## First Time Voters Who Register by Mail

If you are registering to vote for the first time in your jurisdiction and are mailing this registration application, Federal law requires you to show proof of identification the first time you vote. Proof of identification includes:

- A current and valid photo identification or
- A current utility bill, bank statement, government check, paycheck or government document that shows your name and address.

Voters may be exempt from this requirement if they submit a **COPY** of this identification with their mail in voter registration form. If you wish to submit a **COPY**, please keep the following in mind:

- Your state may have additional identification requirements which may mandate you show identification at the polling place even if you meet the Federal proof of identification.
- Do not submit original documents with this application, only **COPIES**.

## If You Were Given this Application in a State Agency or Public Office

If you have been given this application in a State agency or public office, it is your choice to use the application. If you decide to use this application to register to vote, you can fill it out and leave it with the State agency or public office. The application will be submitted for you. Or, you can take it with you to mail to the address listed under your State in the State Instructions. You also may take it with you to deliver in person to your local voter registration office.

Note: The name and location of the State agency or public office where you received the application will remain confidential. It will not appear on your application. Also, if you decide not to use this application to register to vote, that decision will remain confidential. It will not affect the service you receive from the agency or office.

# Application Instructions

Before filling out the body of the form, please answer the questions on the top of the form as to whether you are a United States citizen and whether you will be 18 years old on or before Election Day. If you answer no to either of these questions, you may not use this form to register to vote. However, state specific instructions may provide additional information on eligibility to register to vote prior to age 18.

## Box 1 — Name

Put in this box your full name in this order — Last, First, Middle. Do not use nicknames or initials.

*Note:* If this application is for a change of name, please tell us in **Box A** (*on the bottom half of the form*) your full name before you changed it.

## Box 2 — Home Address

Put in this box your home address (legal address). Do **not** put your mailing address here if it is different from your home address. Do **not** use a post office box or rural route without a box number. Refer to state-specific instructions for rules regarding use of route numbers.

*Note:* If you were registered before *but* this is the first time you are registering from the address in Box 2, please tell us in **Box B** (*on the bottom half of the form*) the address where you were registered before. Please give us as much of the address as you can remember.

*Also Note:* If you live in a rural area but do not have a street address, *or* if you have no address, please show where you live using the map in **Box C** (*at the bottom of the form*).

## Box 3 — Mailing Address

If you get your mail at an address that is different from the address in Box 2, put your mailing address in this box. If you have no address in Box 2, you **must** write in Box 3 an address where you can be reached by mail.

## Box 4 — Date of Birth

Put in this box your date of birth in this order — Month, Day, Year. *Be careful not to use today's date!*

## Box 5 — Telephone Number

Most States ask for your telephone number in case there are questions about your application. However, you do **not** have to fill in this box.

## Box 6 — ID Number

Federal law requires that states collect from each registrant an identification number. You must refer to your state's specific instructions for item 6 regarding information on what number is acceptable for your state. If you have neither a drivers license nor a social security number, please indicate this on the form and a number will be assigned to you by your state.

## Box 7 — Choice of Party

In some States, you must register with a party if you want to take part in that party's primary election, caucus, or convention. To find out if your State requires this, see item 7 in the instructions under your State.

If you want to register with a party, print in the box the full name of the party of your choice.

If you do **not** want to register with a party, write "no party" or leave the box blank. Do **not** write in the word "independent" if you mean "no party," because this might be confused with the name of a political party in your State.

*Note:* If you do not register with a party, you can still vote in general elections and nonpartisan (nonparty) primary elections.

## Box 8 — Race or Ethnic Group

A few States ask for your race or ethnic group, in order to administer the Federal Voting Rights Act. To find out if your State asks for this information, see item 8 in the instructions under your State. If so, put in Box 8 the choice that best describes you from the list below:

- American Indian *or* Alaskan Native
- Asian or Pacific Islander
- Black, *not of* Hispanic Origin
- Hispanic
- Multi-racial
- White, *not of* Hispanic Origin
- Other

## Box 9 — Signature

Review the information in item 9 in the instructions under your State. Before you sign or make your mark, make sure that:

- (1) You meet your State's requirements, and
- (2) You understand **all** of Box 9.

Finally, sign your **full** name or make your mark, and print today's date in this order — Month, Day, Year. If the applicant is unable to sign, put in **Box D** the name, address, and telephone number (optional) of the person who helped the applicant.

# Voter Registration Application

**Before completing this form, review the General, Application, and State specific instructions.**

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If you checked "No" in response to either of these questions, do not complete form.</b> (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)				This space for office use only.			
<b>1</b>	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Name(s)	<input type="checkbox"/> Jr <input type="checkbox"/> II <input type="checkbox"/> Sr <input type="checkbox"/> III <input type="checkbox"/> IV		
<b>2</b>	Home Address		Apt. or Lot #	City/Town	State	Zip Code	
<b>3</b>	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code	
<b>4</b>	Date of Birth		Telephone Number (optional)		ID Number - (See item 6 in the instructions for your state)		
	<b>5</b>	<b>6</b>					
	Month	Day	Year				
<b>7</b>	Choice of Party <small>(see item 7 in the instructions for your State)</small>		Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>				
<b>8</b>							
<b>9</b>	I have reviewed my state's instructions and I swear/affirm that: <ul style="list-style-type: none"> <li>■ I am a United States citizen</li> <li>■ I meet the eligibility requirements of my state and subscribe to any oath required.</li> <li>■ The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.</li> </ul>				<div style="border: 1px solid black; height: 40px; width: 100%;"></div> Please sign full name (or put mark) ▲ Date: <div style="border: 1px solid black; width: 100%; height: 20px; display: flex; justify-content: space-between;"> <span style="width: 33%;"></span> <span style="width: 33%;"></span> <span style="width: 33%;"></span> </div> <div style="display: flex; justify-content: space-around; width: 100%; margin-top: 5px;"> <span>Month</span> <span>Day</span> <span>Year</span> </div>		

**If you are registering to vote for the first time:** please refer to the application instructions for information on submitting copies of valid identification documents with this form.

## Please fill out the sections below if they apply to you.

If this application is for a **change of name**, what was your name before you changed it?

<b>A</b>	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Name(s)	<input type="checkbox"/> Jr <input type="checkbox"/> II <input type="checkbox"/> Sr <input type="checkbox"/> III <input type="checkbox"/> IV
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If you were **registered before but this is the first time you are registering from the address in Box 2**, what was your address where you were registered before?

<b>B</b>	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
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If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

<b>C</b>	<ul style="list-style-type: none"> <li>■ Write in the names of the crossroads (or streets) nearest to where you live.</li> <li>■ Draw an X to show where you live.</li> <li>■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.</li> </ul>	<div style="text-align: right;"><b>NORTH</b> ↑</div>																								
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		Woodchuck Road																								
			<b>X</b>																							

If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

<b>D</b>	
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**Mail this application to the address provided for your State.**

# FOR OFFICIAL USE ONLY


<p>FIRST CLASS STAMP NECESSARY FOR MAILING</p>
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<p>Print Application</p>
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## Voter Registration Application

**Before completing this form, review the General, Application, and State specific instructions.**

Are you a citizen of the United States of America? <input type="checkbox"/> Yes <input type="checkbox"/> No Will you be 18 years old on or before election day? <input type="checkbox"/> Yes <input type="checkbox"/> No <b>If you checked "No" in response to either of these questions, do not complete form.</b> (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)				This space for office use only.			
<b>1</b>	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Name(s)	<input type="checkbox"/> Jr <input type="checkbox"/> II <input type="checkbox"/> Sr <input type="checkbox"/> III <input type="checkbox"/> IV		
<b>2</b>	Home Address		Apt. or Lot #	City/Town	State	Zip Code	
<b>3</b>	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code	
<b>4</b>	Date of Birth		Telephone Number (optional)		ID Number - (See item 6 in the instructions for your state)		
	<b>5</b>	<b>6</b>					
	Month	Day	Year				
<b>7</b>	Choice of Party <small>(see item 7 in the instructions for your State)</small>		Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>				
<b>9</b>	I have reviewed my state's instructions and I swear/affirm that: <ul style="list-style-type: none"> <li>■ I am a United States citizen</li> <li>■ I meet the eligibility requirements of my state and subscribe to any oath required.</li> <li>■ The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.</li> </ul>				<div style="border: 1px solid black; height: 40px; width: 100%;"></div> Please sign full name (or put mark) ▲ Date: <div style="border: 1px solid black; width: 100%; height: 20px; display: flex; justify-content: space-between; align-items: center;"> <span style="width: 33%;"></span> <span style="width: 33%;"></span> <span style="width: 33%;"></span> </div> <div style="display: flex; justify-content: space-around; width: 100%; margin-top: 5px;"> <span>Month</span> <span>Day</span> <span>Year</span> </div>		

**If you are registering to vote for the first time:** please refer to the application instructions for information on submitting copies of valid identification documents with this form.

### Please fill out the sections below if they apply to you.

If this application is for a **change of name**, what was your name before you changed it?

<b>A</b>	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.	Last Name	First Name	Middle Name(s)	<input type="checkbox"/> Jr <input type="checkbox"/> II <input type="checkbox"/> Sr <input type="checkbox"/> III <input type="checkbox"/> IV
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If you were **registered before but this is the first time you are registering from the address in Box 2**, what was your address where you were registered before?

<b>B</b>	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
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If you live in a rural area but do not have a street number, or if you have no address, please show on the map where you live.

<b>C</b>	<ul style="list-style-type: none"> <li>■ Write in the names of the crossroads (or streets) nearest to where you live.</li> <li>■ Draw an X to show where you live.</li> <li>■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.</li> </ul>	<div style="text-align: right;"><b>NORTH</b> ↑</div>								
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		X								

If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

<b>D</b>	
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**Mail this application to the address provided for your State.**

**FOR OFFICIAL USE ONLY**


**FIRST CLASS  
STAMP  
NECESSARY  
FOR  
MAILING**



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## State Instructions

### Alabama

Updated: 03-01-2006

**Registration Deadline** — Voter registration is closed during the ten days preceding an election. Applications must be postmarked or delivered by the eleventh day prior to the election.

**6. ID Number.** Your social security number is requested (by authority of the Alabama Supreme Court, 17-4-122).

**7. Choice of Party.** Optional: You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** You are required to fill in this box; however, your application will not be rejected if you fail to do so. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in Alabama you must:

- be a citizen of the United States
- be a resident of Alabama and your county at the time of registration
- be 18 years old before any election
- not have been convicted of a felony punishable by imprisonment in the penitentiary (or have had your civil and political rights restored)
- not currently be declared mentally incompetent through a competency hearing
- swear or affirm to "support and defend the Constitution of the U.S. and the State of Alabama and further disavow any belief or affiliation with any group which advocates the overthrow of the governments of the U.S. or the State of Alabama by unlawful means

and that the information contained herein is true, so help me God"

**Mailing address:**

Office of the Secretary of State  
P.O. Box 5616  
Montgomery, AL 36103-5616

### Alaska

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** You must provide one of the following identification numbers; Alaska Driver's License or Alaska State Identification Card Number. If you do not have an Alaska Driver's License or Alaska State Identification Card, you must provide the last four digits of your Social Security Number. If you do not have any of these identification numbers, please write "NONE" on the form. A unique identifying number will be assigned to you for voter registration purposes. This information is kept confidential. Having this information assists in maintaining your voter record and may assist in verifying your identity (Title 15 of the Alaska Statutes).

**7. Choice of Party.** You do not have to declare a party affiliation when registering to vote. If you do not choose a party, you will be registered as Undeclared. Alaska has a closed primary election system. Each recognized political party has a separate ballot listing only candidates from that political party. Voters registered as a member of a political party may only vote that party's ballot. Voters registered as undeclared or non-partisan may choose one

ballot from the ballots available.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Alaska you must:

- be a citizen of the United States
- be at least 18 years old within 90 days of completing this registration
- be a resident of Alaska
- not be a convicted felon (unless unconditionally discharged)
- not be registered to vote in another State

**Mailing address:**

Division of Elections  
State of Alaska  
PO Box 110017  
Juneau, AK 99811-0017

### Arizona

Updated: 03-01-2006

**Registration Deadline** — 29 days before the election.

**6. ID Number.** Your completed voter registration form must contain the number of your Arizona driver license, or non-operating identification license issued pursuant to A.R.S. § 28-3165, if the license is current and valid. If you *do not have* a current and valid Arizona driver license or non-operating identification license, you must include the last four digits of your social security number if one has been issued to you. If you do not have a current and valid driver license or non-operating identification license or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the Secretary of State.

## State Instructions

**7. Choice of Party.** If you are registered in a political party which has qualified for ballot recognition, you will be permitted to vote the primary election ballot for that party. If you are registered as an independent, no party preference or as a member of a party which is not qualified for ballot recognition, you may select and vote one primary election ballot for one of the recognized political parties.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Arizona you must:

- be a citizen of the United States
- be a resident of Arizona and your county at least 29 days preceding the next election
- be 18 years old on or before the next general election
- not have been convicted of treason or a felony (or have had your civil rights restored)
- not currently be declared an incapacitated person by a court of law

**Mailing address:**

Secretary of State/Elections  
1700 W. Washington, 7th Floor  
Phoenix, AZ 85007-2888

### Arkansas

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or nonoperating identification number. If you do not have a driver's license or nonoperating identification, you must include the last four digits

of your social security number. If you do not have a driver's license or a nonoperating identification or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State.

**7. Choice of Party.** Optional. You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Arkansas you must:

- be a citizen of the United States
- live in Arkansas at the address in Box 2 on the application
- be at least 18 years old before the next election
- not be a convicted felon (or have completely discharged your sentence or been pardoned)
- not claim the right to vote in any other jurisdiction
- not previously be adjudged mentally incompetent by a court of competent jurisdiction

**Mailing address:**

Secretary of State  
Voter Services  
P.O. Box 8111  
Little Rock, AR 72203-8111

### California

Updated: 03-01-2006

**Registration Deadline** — 15 days before the election.

**6. ID Number.** When you register to vote, you must provide your California driver's license or California identification card number, if you have one. If you do not have a driver's license or

ID card, you must provide the last four digits of your Social Security Number (SSN). If you do not include this information, you will be required to provide identification when you vote.

**7. Choice of Party.** Please enter the name of the political party with which you wish to register. If you do not wish to register with any party, enter "Decline to State" in the space provided.

California law allows voters who "decline to state" an affiliation with a qualified political party or who affiliate with a nonqualified political party to vote in the primary election of any qualified political party that files a notice with the Secretary of State allowing them to do so. You can call 1-800-345-VOTE or visit [www.sos.ca.gov](http://www.sos.ca.gov) to learn which political parties are allowing nonaffiliated voters to participate in their primary election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in California you must:

- be a citizen of the United States
  - be a resident of California
  - be at least 18 years of age at the time of the next election
  - not be imprisoned or on parole for the conviction of a felony
  - not currently be judged mentally incompetent by a court of law
- Signature is required. If you meet the requirements listed above, please sign and date the registration card in the space provided.

**Mailing address:**

Secretary of State  
Elections Division  
1500 11th Street  
Sacramento, CA 95814

## State Instructions

### Colorado

Updated: 03-28-2008

**Registration Deadline** — 29 days before the election. If the application is received in the mails without a postmark, it must be received within 5 days of the close of registration.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or identification number. If you do not have a driver's license or state issued identification, you must include the last four digits of your social security number. If you do not have a driver's license or a state issued identification or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Colorado you must:

- be a citizen of the United States
- be a resident of Colorado 30 days prior to the election
- be 18 years old on or before election day
- not be confined as a prisoner or serving any part of a sentence under mandate

**Mailing address:**

Colorado Secretary of State  
1700 Broadway, Suite 270  
Denver, Colorado 80290

### Connecticut

Updated: 03-01-2006

**Registration Deadline** — 14 days before the election.

**6. ID Number.** Connecticut Driver's License Number, or if none, the last four digits of your Social Security Number.

**7. Choice of Party.** This is optional, but you must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Connecticut you must:

- be a citizen of the United States
- be a resident of Connecticut and of the town in which you wish to vote
- be 17 years old. You can vote when you turn 18
- have completed confinement and parole if previously convicted of a felony, and have had your voting rights restored by Registrars of Voters.
- not currently be declared mentally incompetent to vote by a court of law

**Mailing address:**

Secretary of State  
Elections Division  
30 Trinity Street  
Hartford, CT 06106

### Delaware

Updated: 02-07-2012

**Registration Deadline** — The 4th Saturday before a primary or general election, and 10 days before a special election.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or nonoperating identification number. If you do not have a driver's license or nonoperating identification, you must include the last four digits of your social security number. If you do not have a driver's license or a nonoperating identification or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Delaware you must:

- be a citizen of the United States
- be a permanent resident of Delaware
- be at least 18 years old on the date of the next general election
- felons are eligible to vote if certain requirements are met: fines and sentence completed at least five years prior to application date; felony convictions can not be disqualifying felonies, which are murder, sexual offenses, or crimes against public administration involving bribery or improper influence or abuse of office.
- not be mentally incompetent

**Mailing address:**

State of Delaware  
Office of the State Election  
Commissioner  
905 S. Governors Ave., Suite 170  
Dover, DE 19904

## State Instructions

### District of Columbia

Updated: 10-29-2003

**Registration Deadline** — 30 days before the election.

- 6. ID Number.** Federal law now requires that all voter registration applications must include either the applicant's driver's license number or the last four digits of the applicant's social security number in order to be processed.
- 7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.
- 8. Race or Ethnic Group.** Leave blank.
- 9. Signature.** To register in the District of Columbia you must:
- be a citizen of the United States
  - be a District of Columbia resident at least 30 days preceding the next election
  - be at least 18 years old on or preceding the next election
  - not be in jail for a felony conviction
  - not have been judged "mentally incompetent" by a court of law
  - not claim the right to vote anywhere outside D.C.

**Mailing address:**

District of Columbia Board of Elections & Ethics  
441 4th Street, NW, Suite 250  
Washington, DC 20001-2745

### Florida

Updated: 11-30-2011

**Registration Deadline** — 29 days before the election.

- 6. ID Number.** If you have one, you must provide your Florida

driver's license number or Florida identification card number. If you do not have a Florida driver's license or identification card, you must provide the last four digits of your social security number. If you have not been issued any of these numbers, you must write the word "NONE."

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** You are requested, but not required, to fill in this box. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in Florida you must:

- be a citizen of the United States
- be a legal resident of both the State of Florida and of the county in which you seek to be registered
- be 18 years old (you may pre-register if you are at least 16)
- not be adjudicated mentally incapacitated with respect to voting in Florida or any other State, or if you have, you must first have your voting rights restored.
- not be a convicted felon, or if you are, you must first have your civil rights restored if they were taken away.
- swear or affirm the following: "I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information in this application is true."

**Mailing address:**

State of Florida  
Department of State  
Division of Elections  
The R.A. Gray Building  
500 South Bronough St, Rm 316  
Tallahassee, Florida 32399-0250

### Georgia

Updated: 03-28-2008

**Registration Deadline** — The fifth Monday before any general primary, general election, or presidential preference primary, or regularly scheduled special election pursuant to the Georgia Election Code. In the event that a special election is scheduled on a date other than those dates prescribed by the Georgia Election Code, registration would close on the 5th day after the call.

**6. ID Number.** Federal law requires you to provide your full GA Drivers License number or GA State issued ID number. If you do not have a GA Drivers License or GA ID you must provide the last 4 digits of your Social Security number. Providing your full Social Security number is optional. Your Social Security number will be kept confidential and may be used for comparison with other state agency databases for voter registration identification purposes. If you do not possess a GA Drivers License or Social Security number, a unique identifier will be provided for you.

**7. Choice of Party.** You do not have to register with a party to take part in that party's primary, caucus or convention.

**8. Race or Ethnic Group.** You are requested to fill in this box. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in Georgia you must:

- be a citizen of the United States
- be a legal resident of Georgia and of the county in which you want to vote



## State Instructions

- be 18 years old within six months after the day of registration, and be 18 years old to vote
- not be serving a sentence for having been convicted of a felony
- not have been judicially determined to be mentally incompetent, unless the disability has been removed

**Mailing address:**

Elections Division  
Office of the Secretary of State  
1104 West Tower  
2 Martin Luther King, Jr. Dr. SE  
Atlanta, GA 30334-1505

### Hawaii

**Updated:** 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your full social security number is required. It is used to prevent fraudulent registration and voting. Failure to furnish this information will prevent acceptance of this application (Hawaii Revised Statutes, Section 11-15).

**7. Choice of Party.** A “choice of party” is not required for voter registration.

**8. Race or Ethnic Group.** Race or ethnic group information is not required for voter registration.

**9. Signature.** To register in Hawaii you must:

- be a citizen of the United States
- be a resident of the State of Hawaii
- be at least 16 years old (you must be 18 years old by election day in order to vote)

- not be incarcerated for a felony conviction
- not be adjudicated by a court as “non compos mentis”

**Mailing address:**

Office of Elections  
State of Hawaii  
802 Lehua Avenue  
Pearl City, HI 96782

### Idaho

**Updated:** 03-01-2006

**Registration Deadline** — 25 days before the election.

**6. ID Number.** Enter your driver's license number. If you have no driver's license, enter the last 4 digits of your social security number.

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Idaho you must:

- be a citizen of the United States
- have resided in Idaho and in the county for 30 days prior to the day of election
- be at least 18 years old
- not have been convicted of a felony, and without having been restored to the rights of citizenship, or confined in prison on conviction of a criminal offense

**Mailing address:**

Secretary of State  
P.O. Box 83720  
State Capitol Bldg.  
Boise, ID 83720-0080

### Illinois

**Updated:** 08-14-2012

**Registration Deadline** — 28 days prior to each election.

**6. ID Number.** Your driver's license number is required to register to vote. If you do not have a driver's license, at least the last four digits of your social security number are required. If you have neither, please write “NONE” on the form. A unique identifier will be assigned to you by the State.

**7. Choice of Party.** Party registration or preference is not required for voter registration. However, when you apply for a primary ballot, you must indicate your party preference for that election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** A signature is required. If signature is missing from registration form, you will be notified your registration is incomplete.

To register in Illinois you must:

- be a citizen of the United States
- be a resident of Illinois and of your election precinct at least 30 days before the next election
- be at least 18 years old on or before the next election
- not be in jail for a felony conviction
- not claim the right to vote anywhere else

**Mailing address:**

State Board of Elections  
2329 S. MacArthur Boulevard  
Springfield, IL 62704

## State Instructions

### Indiana

Updated: 03-01-2006

**Registration Deadline** — 29 days before the election.

**6. ID Number.** Your state voter ID number is your ten digit Indiana issued driver's license number. If you do not possess an Indiana driver's license then provide the last four digits of your social security number. Please indicate which number was provided. (Indiana Code 3-7-13-13)

**7. Choice of Party.** Leave blank.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Indiana you must:

- be a citizen of the United States
- have resided in the precinct at least 30 days before the next election
- be at least 18 years of age on the day of the next general election
- not currently be in jail for a criminal conviction

**Mailing address:**

Election Division  
Office of the Secretary of State  
302 West Washington Street,  
Room E-204  
Indianapolis, IN 46204-2743

### Iowa

Updated: 03-28-2008

**Registration Deadline** — Must be delivered by 5 p.m. 10 days before the election, if it is a state primary or general election; 11 days before all others.\* Registration forms which are postmarked 15 or more days before an election are considered on time even if received after the deadline.

\*If you fail to meet the voter registration deadlines above you can register and vote by following the guidelines for election day registration. You can find these on the Iowa Secretary of State's website: [www.sos.state.ia.us/pdfs/elections/EDRbrochure.pdf](http://www.sos.state.ia.us/pdfs/elections/EDRbrochure.pdf).

**6. ID Number.** Your ID number is your Iowa driver's license number (or Iowa non-driver identification number) if you have one, if not then the last four digits of your social security number. The ID number you provide will be verified with the Iowa Department of Transportation or the Social Security Administration.

**7. Choice of Party.** You may, but do not have to, register with a party in advance if you want to take part in that party's primary election. You may change or declare a party affiliation at the polls on primary election day.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Iowa you must:

- be a citizen of the United States
- be a resident of Iowa
- be at least 17-1/2 years old (you must be 18 to vote)
- not have been convicted of a felony (or have had your rights restored)
- not currently be judged by a court to be "incompetent to vote"
- not claim the right to vote in more than one place
- give up your right to vote in any other place

**Mailing address:**

Elections Division  
Office of the Secretary of State  
Lucas Building-1st Floor  
321 E. 12th Street  
Des Moines, IA 50319

### Kansas

Updated: 03-01-2006

**Registration Deadline** — Postmarked or delivered 15 days before the election.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or nondriver's identification card number. If you do not have a driver's license or nondriver's identification card, you must include the last four digits of your social security number. If you do not have a driver's license or a nondriver's identification card or social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State. The number you provide will be used for administrative purposes only and will not be disclosed to the public. (KSA 25-2309).

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Kansas you must:

- be a citizen of the United States
- be a resident of Kansas
- be 18 by the next election
- have completed the terms of your sentence if convicted of a felony; a person serving a sentence for a felony conviction is ineligible to vote
- not claim the right to vote in any other location or under any other name
- not be excluded from voting for mental incompetence by a court of competent jurisdiction

## State Instructions

### Mailing address:

Secretary of State  
1st Floor, Memorial Hall  
120 SW 10th Ave.  
Topeka, KS 66612-1594

### Kentucky

Updated: 03-01-2006

**Registration Deadline** — 29 days before the election.

**6. ID Number.** Your full social security number is required. It is used for administrative purposes only and is not released to the public (KRS 116.155). No person shall be denied the right to register because of failure to include social security number.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Kentucky you must:

- be a citizen of the United States
- be a resident of Kentucky
- be a resident of the county for at least 28 days prior to the election date
- be 18 years of age on or before the next general election
- not be a convicted felon or if you have been convicted of a felony, your civil rights must have been restored by executive pardon
- not have been judged "mentally incompetent" in a court of law
- not claim the right to vote anywhere outside Kentucky

### Mailing address:

State Board of Elections  
140 Walnut Street  
Frankfort, KY 40601-3240

### Louisiana

Updated: 08-14-2012

**Registration Deadline** — 30 days before the election.

**6. ID Number.** You must provide your Louisiana driver's license number or Louisiana special identification card number, if issued. If not issued, you must provide at least the last four digits of your social security number, if issued. The full social security number may be provided on a voluntary basis. If the applicant has neither a Louisiana driver's license, a Louisiana special identification card, or a social security number, the applicant shall attach one of the following items to his application: (a) a copy of a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of applicant. Neither the registrar nor the Department of State shall disclose the social security number of a registered voter or circulate the social security numbers of registered voters on commercial lists (R.S. 18:104 and 154; 42 U.S.C. § 405).

**7. Choice of Party.** If you do not list a party affiliation, you cannot vote in the Presidential Preference Primary and party committee elections. Political party affiliation is not required for any other election.

**8. Race or Ethnic Group.** You are requested to fill in this box. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in Louisiana you must:

- be a citizen of the United States
- be a resident of Louisiana (Residence address must be address where you claim homestead exemption, if any, except for a resident in a nursing home or veteran's home who may select to use the address of the nursing home or veterans' home or the home where he has a homestead exemption. A college student may elect to use his home address or his address while away at school.)
- be at least 17 years old, and be 18 years old prior to the next election to vote
- not currently be under an order of imprisonment for conviction of a felony
- not currently be under a judgment of interdiction for mental incompetence

### Mailing address:

Secretary of State  
Attention: Voter Registration  
P.O. Box 94125  
Baton Rouge, LA 70804-9125

### Maine

Updated: 08-14-2012

**Registration Deadline** — Delivered 21 business days before the election (or a voter may register *in-person* up to and including election day).

**6. ID Number.** You must list your valid Maine driver's license number. If you don't have a valid Maine driver's license, then you must provide the last four digits of your Social Security Number. Voters who don't have either of these forms of ID must write "NONE" in this space.

## State Instructions

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention (unless otherwise permitted by a political party).

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Maine you must:

- be a citizen of the United States
- be a resident of Maine and the municipality in which you want to vote
- be at least 17 years old (you must be 18 years old to vote)

**Mailing address:**

Elections Division  
Bureau of Corporations,  
Elections and Commissions  
101 State House Station  
Augusta, ME 04333-0101

### Maryland

Updated: 06-26-2008

**Registration Deadline** — 9:00 p.m. 21 days before the election.

**6. ID Number.** If you have a current, valid Maryland driver's license or a Motor Vehicle Administration identification card, you must enter the driver's license or identification number. If you do not have a current, valid Maryland driver's license or Motor Vehicle Administration identification card, you must enter at least the last 4 digits of your social security number. However, please note, the disclosure of your full Social Security number is voluntary. The statutory authority allowing election officials to request your full Social Security number is Election Law Article, Section 3-202, Annotated Code of Maryland. The number will

be used only for registration and other administrative purposes. It will be kept confidential.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Maryland you must:

- be a U.S. citizen
- be a Maryland resident
- be at least 18 years old by the next general election
- not be under guardianship for mental disability
- not have been convicted of buying or selling votes
- not have been convicted of a felony, or if you have, you have completed serving a court ordered sentence of imprisonment, including any term of parole or probation for the conviction.

**Mailing address:**

State Board of Elections  
P.O. Box 6486  
Annapolis, MD 21401-0486

### Massachusetts

Updated: 03-01-2006

**Registration Deadline** — 20 days before the election.

**6. ID Number.** Federal law requires that you provide your driver's license number to register to vote. If you do not have a current and valid Massachusetts' driver's license then you must provide the last four (4) digits of your social security number. If you have neither, you must write "NONE" in the box and a unique identifying number will be assigned to you.

**7. Choice of Party.** If you do not designate a party of political designation in this box, you will be registered as unenrolled. Unenrolled voters may participate in party primaries. However, an unenrolled voter must enroll in a party on the day of the Presidential Preference Primary in order to participate in that primary.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Massachusetts you must:

- be a citizen of the United States
- be a resident of Massachusetts
- be 18 years old on or before the next election
- not have been convicted of corrupt practices in respect to elections
- not be under guardianship with respect to voting
- not be currently incarcerated for a felony conviction

**Mailing address:**

Secretary of the Commonwealth  
Elections Division, Room 1705  
One Ashburton Place  
Boston, MA 02108

### Michigan

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or state issued personal identification card number. If you do not have a driver's license or state issued personal identification card, you must include the last four digits of your social security number. If you



## State Instructions

do not have a driver's license or a state issued personal identification card or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State.

**7. Choice of Party.** A "choice of party" is not required for voter registration.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Michigan you must:

- be a citizen of the United States
- be 18 years old by the next election
- be a resident of Michigan and at least a 30 day resident of your city or township by election day
- not be confined in a jail after being convicted and sentenced

**Notice:** Michigan law requires that the same address be used for voter registration and driver license purposes. Therefore, if the residence address you provide on this form differs from the address shown on a driver license or personal identification card issued by the State of Michigan, the Secretary of State will automatically change your driver license or personal identification card address to match the residence address entered on this form. If an address change is made, the Secretary of State will mail you an address update sticker for your driver license or personal identification card.

**Caution:** If you register by mail, you must vote in person at your assigned precinct the first time you vote, unless you are:

- disabled as defined by state law;
- 60 years of age or older; or
- temporarily residing overseas.

### Mailing address:

Michigan Department of State  
Bureau of Elections  
P.O. Box 20126  
Lansing, MI 48901-0726

## Minnesota

Updated: 12-31-2008

### Registration Deadline —

Delivered by 5:00 p.m. 21 days before the election (there is also election day registration at polling places).

**6. ID Number.** You are required to provide your Minnesota driver's license or state ID number to register to Vote. If you do not have a Minnesota driver's license or state ID then you will have to provide the last four digits of your social security number. If you have neither, please write "none" on the form.

**7. Choice of Party.** Leave blank.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Minnesota you must:

- be a citizen of the United States
- be a resident of Minnesota for 20 days before the next election
- maintain residence at the address given on the registration form
- be at least 18 years old on election day
- if previously convicted of a felony, your felony sentence has expired or been completed, or you have been discharged from the sentence
- not be under a court-ordered guardianship in which the right to vote has been revoked
- not be found by a court to be legally incompetent to vote.

### Mailing address:

Secretary of State  
60 Empire Drive, Suite 100  
St. Paul, MN 55103-1855

## Mississippi

Updated: 05-07-2010

**Registration Deadline —** 30 days before the election.

**6. ID Number.** You are required to provide your current and valid driver's license number or, if you don't have one, the last four digits of your social security number.

**7. Choice of Party.** Mississippi does not have party registration.

Therefore, you do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Mississippi you must:

- be a citizen of the United States
- have lived in Mississippi and in your county (and city, if applicable) 30 days before the election in which you want to vote
- be 18 years old by the time of the general election in which you want to vote
- have not been convicted of murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, armed robbery, extortion, felony bad check, felony shoplifting, larceny, receiving stolen property, robbery, timber larceny, unlawful taking of a motor vehicle, statutory rape, carjacking, or bigamy, or have had your rights restored as required by law
- not have been declared mentally incompetent by a court

## State Instructions

*Note:* State law changed by federal court order in 1998 and by state legislation in 2000. We now accept the form as registration for voting for all state and federal offices.

**Mailing address:**

Secretary of State  
P.O. Box 136  
Jackson, MS 39205-0136

**Local county addresses:**

You also may return completed applications to the county circuit clerk/registrar where you reside. A complete list of county circuit clerk/registrars is available on Mississippi's website at [www.sos.ms.gov](http://www.sos.ms.gov).

### Missouri

Updated: 09-12-2006

**Registration Deadline** — 28 days before the election.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number. Your completed voter registration form must also include the last four digits of your social security number. (Section 115.155, RSMo). If you do not have a driver's license or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State. Any electronic media, printouts or mailing labels provided under this section shall not include telephone numbers and social security numbers of voters. (Section 115.157, RSMo).

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To vote in Missouri you must:

- be a citizen of the United States
- be a resident of Missouri
- be at least 17-1/2 years of age (you must be 18 to vote)
- not be on probation or parole after conviction of a felony, until finally discharged from such probation or parole
- not be convicted of a felony or misdemeanor connected with the right of suffrage
- not be adjudged incapacitated by any court of law
- not be confined under a sentence of imprisonment

**Mailing address:**

Secretary of State  
P.O. Box 1767  
Jefferson City, MO 65102-1767

### Montana

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** You must provide your Montana driver's license number. If you do not have a Montana driver's license number then you must list the LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER. If you have neither a driver's license, nor a social security number, please write "NONE" on the form. The state of Montana will assign to you a unique identifying number.

**7. Choice of Party.** Montana does not require party registration to participate in any election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Montana you must:

- be a citizen of the United States
- be at least 18 years old on or before the election
- be a resident of Montana and of the county in which you want to vote for at least 30 days before the next election
- not be in a penal institution for a felony conviction
- not currently be determined by a court to be of unsound mind
- meet these qualifications by the next election day if you do not currently meet them

**Mailing address:**

Secretary of State's Office  
P.O. Box 202801  
State Capitol  
Helena, MT 59620-2801

### Nebraska

Updated: 03-01-2006

**Registration Deadline** — The third Friday before the election (or delivered by 6 p.m. on the second Friday before the election).

**6. ID Number.** You must provide your Nebraska driver's license number. If you do not have a Nebraska driver's license number then you must list the last four digits of your social security number.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Nebraska you must:

- be a citizen of the United States
- be a resident of Nebraska

## State Instructions

- be at least 18 years of age or will be 18 years of age on or before the first Tuesday after the first Monday of November
- not have been convicted of a felony, or if convicted, have had your civil rights restored
- not have been officially found to be mentally incompetent

**Mailing address:**

Nebraska Secretary of State  
Suite 2300, State Capitol Bldg.  
Lincoln, NE 68509-4608

### Nevada

Updated: 05-07-2010

**Registration Deadline** — The deadline for mail-in registration is the fifth Saturday before any primary or general election. In person registration remains available until 9:00 p.m. on the third Tuesday preceding any primary or general election. You may register to vote in person only by appearing at the office of the County Clerk/Registrar of Voters.

**6. ID Number.** You must supply a Nevada's Driver's License Number or Nevada ID Card Number if you have been issued one. If you do not have a Driver's License Number or Nevada ID Card Number, you must supply the last four digits of your Social Security Number. If you do not have a Social Security Number, please contact your County Clerk/Registrar of Voters to be assigned a unique identifier.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention. If you register with a minor political party, or as a Nonpartisan you will receive

a Nonpartisan Ballot for the Primary Election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Nevada you must:

- be a citizen of the United States
- have attained the age of 18 years on the date of the next election
- have continuously resided in the State of Nevada, in your county, at least 30 days and in your precinct at least 10 days before the next election
- have your civil rights restored if you were convicted of a felony
- not be determined by a court of law to be mentally incompetent
- claim no other place as your legal residence

**Mailing address:**

Secretary of State  
Elections Division  
101 North Carson Street  
Suite 3  
Carson City, NV 89701-4786

Applications may be returned to the Secretary of State's office at the address above, but to avoid possible delays, you are advised to return your completed voter registration applications directly to your local county election official.

**Local county addresses:**

To meet registration deadlines, especially during the two weeks before the close of the mail-in registration deadline, return completed applications to your respective County Clerk/Registrar of Voters. A complete list of County Clerk/Registrar of Voters and registration deadlines is available on Nevada's website: [www.nvsos.gov](http://www.nvsos.gov).

### New Hampshire

Updated: 03-01-2006

**Registration Deadline** — New Hampshire town and city clerks will accept this application only as a request for their own absentee voter mail-in registration form, which must be received by your city or town clerk by 10 days before the election.

New Hampshire town and city clerks will accept this application only as a request for their own absentee voter mail-in registration form. You need to fill in only Box 1 and Box 2 or 3.

The application should be mailed to your town or city clerk at your zip code. These addresses are listed on the Secretary of State web site at [www.state.nh.us/sos/clerks.htm](http://www.state.nh.us/sos/clerks.htm)

It should be mailed in plenty of time for your town or city clerk to mail you their own form and for you to return that form to them by 10 days before the election.

### New Jersey

Updated: 03-28-2008

**Registration Deadline** — 21 days before the election.

**6. ID Number.** The last four digits of your Social Security number OR your New Jersey Driver's License number is required for voter registration. If you do not possess either of these identifications, please write "NONE" on the form. The State will assign a number that will serve to identify you for voter registration purposes.

## State Instructions

**7. Choice of Party.** New Jersey's voter registration form does not provide a check-off for political party affiliation. A newly registered voter or voter who has never voted in a political party primary election can declare party affiliation at the polling place on the day of a primary election. In New Jersey, a primary election is only held for the Democratic and Republican parties. A voter may also file a political party declaration form to become a member of a political party. If a declared voter wished to change party affiliation he or she must file a declaration form 50 days before the primary election, in order to vote.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in New Jersey you must:

- be a citizen of the United States
- be at least 18 years of age by the time of the next election
- be a resident of this State and county at your address at least 30 days before the next election
- not be serving a sentence or on parole or probation as the result of a conviction of any indictable offense under the laws of this or another state or of the United States

**Mailing address:**

New Jersey Department of Law and Public Safety  
Division of Elections  
PO BOX 304  
Trenton, NJ 08625-0304

### New Mexico

Updated: 03-01-2006

**Registration Deadline** — 28 days before the election.

**6. ID Number.** Your full social security number is required. This registration card containing your social security number will become part of the permanent voter registration records of your locality, which are open to inspection by the public in the office of the county clerk. However, your social security number and date of birth will remain confidential and will not be disclosed to the public. Computerized listings of limited voter registration information (without social security number or birth date) are available to the general public, and are furnished upon request to incumbent election officeholders, candidates, political parties, courts and non-profit organizations promoting voter participation and registration, for political purposes only (§1-5-19B, NMSA 1978).

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in New Mexico you must:

- be a citizen of the United States
- be a resident of the State of New Mexico
- be 18 years of age at the time of the next election
- not have been denied the right to vote by a court of law by reason of mental incapacity and, if I have been convicted of a felony, I have completed all conditions of probation or parole, served the entirety of a sentence or have been granted a pardon by the Governor.

**Mailing address:**

Bureau of Elections  
325 Don Gaspar, Suite 300  
Santa Fe, NM 87503

### New York

Updated: 03-01-2006

**Registration Deadline** — 25 days before the election.

**6. ID Number.** Federal law requires that you provide your driver's license number to register to vote. If you do not have a driver's license then you will have to provide at least the last four digits of your social security number. If you have neither, please write "NONE" on the form. A unique identifying number will be assigned to you by your State.

**7. Choice of Party.** You must enroll with a party if you want to vote in that party's primary election or caucus.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in New York you must:

- be a citizen of the United States
- be a resident of the county, or of the City of New York, at least 30 days before an election
- be 18 years old by December 31 of the year in which you file this form (*Note: You must be 18 years old by the date of the general, primary, or other election in which you want to vote*)
- not be in jail or on parole for a felony conviction
- not currently be judged incompetent by order of a court of competent judicial authority
- not claim the right to vote elsewhere

**Mailing address:**

NYS Board of Elections  
40 Steuben Street  
Albany, NY 12207-2108



## State Instructions

### North Carolina

Updated: 03-01-2006

**Registration Deadline** — Postmarked 25 days before the election or received in the elections office or designated voter registration agency site by 5:00 p.m. 25 days before the election.

**6. ID Number.** Provide your North Carolina driver's license number, or North Carolina Department of Motor Vehicles ID number. If you do not have a driver's license, then list the last four digits of your social security number.

**7. Choice of Party.** You must register with a party to vote in that party's primary unless that party allows unaffiliated voters to vote in its primary. If you indicate a political party that is not a qualified party, or indicate no party, you will be listed as "Unaffiliated".

**8. Race or Ethnic Group.** You are required to fill in this box. However, your application will not be rejected if you fail to do so. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in North Carolina you must:

- be a citizen of the United States
- be a resident of North Carolina and the county in which you live for at least 30 days prior to the election
- be 18 years of age by the day of the next general election
- have your rights of citizenship restored if you have been convicted of a felony
- not be registered or vote in any other county or state

**Mailing address:**

State Board of Elections  
P.O. Box 27255  
Raleigh, NC 27611-7255

### North Dakota

Updated: 03-01-2006

North Dakota does not have voter registration.

### Ohio

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your social security number is requested. Providing this number is voluntary. This information allows the Board of Elections to verify your registration if necessary (O.R.C. 3503.14). [Federal law requires that you provide your driver's license number to register to vote. If you do not have a driver's license then you will have to provide at least the last four digits of your social security number. If you don't have either number you will have to write "NONE" on the form and the State will assign you a number.]

**7. Choice of Party.** You do not register with a party if you want to take part in that party's primary election. Party affiliation is established by voting at a primary election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Ohio you must:

- be a citizen of the United States
- be a resident of Ohio
- be 18 years old on or before election day. If you will be 18 on or before the day of the general election, you may vote in the primary election for candidates only.
- not be convicted of a felony and currently incarcerated
- not be found incompetent by a court for purposes of voting

**Mailing address:**

Secretary of State of Ohio  
Elections Division  
180 E. Broad Street — 15th Floor  
Columbus, OH 43215

### Oklahoma

Updated: 10-29-2003

**Registration Deadline** — 25 days before the election.

**6. ID Number.** The last four digits of your social security number are required. (Oklahoma Title 26, Section 4-112) In addition, your Oklahoma driver's license number is requested.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Oklahoma you must:

- be a citizen of the United States and a resident of the State of Oklahoma
- be 18 years old on or before the date of the next election
- have not been convicted of a felony, for which a period of time equal to the original sentence has not expired, or for which you have not been pardoned
- not now be under judgment as an incapacitated person, or a partially incapacitated person prohibited from registering to vote

**Mailing address:**

Oklahoma State Election Board  
Box 528800  
Oklahoma City, OK 73152-8800

## State Instructions

### Oregon

Updated: 03-01-2006

**Registration Deadline** — 21 days before the election.

**6. ID Number.** Federal law requires that you provide your driver's license number to register to vote. If you do not have a driver's license then you will have to provide at least the last four digits of your social security number. If you have neither, you will need to write "NONE" on the form. A unique identifying number will instead be assigned to you by your State.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Oregon you must:

- be a citizen of the United States
- be a resident of Oregon
- be at least 18 years old by election day

**Mailing address:**

Secretary of State  
Elections Division  
141 State Capitol  
Salem, OR 97310-0722

### Pennsylvania

Updated: 03-01-2006

**Registration Deadline** — 30 days before an election or primary.

**6. ID Number.** You must supply a Driver's License Number, if you have one. If you do not have a Driver's License Number, you must supply the last four digits of your

social Security Number. If you do not have a Social Security Number, please write "NONE" in the box.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election.

**8. Race or Ethnic Group.** You are requested to fill in this box. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in Pennsylvania you must:

- be a citizen of the United States at least one month before the next election
- be a resident of Pennsylvania and your election district at least 30 days before the election
- be at least 18 years of age on the day of the next election

**Mailing address:**

Office of the Secretary of  
the Commonwealth  
210 North Office Bldg.  
Harrisburg, PA 17120-0029

### Rhode Island

Updated: 03-28-2008

**Registration Deadline** — 30 days before the election.

**6. ID Number.** The applicant shall be required to provide his/her Rhode Island driver's license number if the applicant has been issued a current and valid Rhode Island driver's license. In the case of an applicant who has not been issued a current and valid driver's license he/she must provide the last four (4) digits of his/her social security number. An applicant, who has neither, will be assigned a unique identifying number by the State of Rhode Island.

**7. Choice of Party.** In Rhode Island, a person must register with a party if he/she wishes to take part in that party's primary election. A person who fails to register with a party at the time of registration may, if he/she chooses, register with a party on the day of that party's primary and take part in that party's primary election. If a person does not register with a party, he/she can still vote in general elections and non-partisan primary elections.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Rhode Island you must:

- be a citizen of the United States
- be a resident of Rhode Island for 30 days preceding the next election
- be 18 years old by election day
- not be currently incarcerated in a correctional facility due to a felony conviction
- not have been lawfully judged to be mentally incompetent

**Mailing address:**

Rhode Island State Board of  
Elections  
50 Branch Ave.  
Providence, RI 02904-2790

### South Carolina

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your full social security number is required. It is required by the South Carolina Code of Laws and is used for internal purposes only. Social security number does not appear on any report produced by the State Election Commission nor is it released to any unauthorized

## State Instructions

individual. (South Carolina Title 7-5-170)

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** You are required to fill in this box. Your application may be rejected if you fail to do so. See the list of choices under the Application Instructions for Box 8 (on page 2).

**9. Signature.** To register in South Carolina you must:

- be a citizen of the United States
- be at least 18 years old on or before the next election
- be a resident of South Carolina, your county and precinct
- not be confined in any public prison resulting from a conviction of a crime
- never have been convicted of a felony or offense against the election laws, or if previously convicted, have served your entire sentence, including probation or parole, or have received a pardon for the conviction
- not be under a court order declaring you mentally incompetent
- claim the address on the application as your only legal place of residence and claim no other place as your legal residence

**Mailing address:**

State Election Commission  
P.O. Box 5987  
Columbia, SC 29250-5987

### South Dakota

Updated: 03-01-2006

**Registration Deadline** — Received 15 days before the election.

**6. ID Number.** Your driver's license number is requested. If you do not have a valid driver's license, you must provide the last four digits of your social security number.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in South Dakota you must:

- be a citizen of the United States
- reside in South Dakota
- be 18 years old by the next election
- not be currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system
- not have been adjudged mentally incompetent by a court

**Mailing address:**

Elections, Secretary of State  
500 E. Capitol  
Pierre, SD 57501-5070

### Tennessee

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** Your full social security number is required. Social security number, if any, is required for purposes of identification and to avoid duplicate registration (TCA 2.2.116).

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Optional.

**9. Signature.** To register in Tennessee you must:

- be a citizen of the United States
- be a resident of Tennessee
- be at least 18 years old on or before the next election
- not have been convicted of a felony, or if convicted, have had your full rights of citizenship restored (or have received a pardon)
- not be adjudicated incompetent by a court of competent jurisdiction (or have been restored to legal capacity)

**Mailing address:**

Coordinator of Elections  
Tennessee Tower, Ninth Floor  
312 Eighth Avenue, North  
Nashville, TN 37243

### Texas

Updated: 03-01-2006

**Registration Deadline** — 30 days before the election.

**6. ID Number.** You must provide your driver's license number to register to vote. If you do not have a driver's license then you will have to provide at least the last four digits of your social security number. If you have neither, please write "NONE" on the form. A unique identifying number will instead be assigned to you by your State.

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Texas you must:

- be a citizen of the United States

## State Instructions

- be a resident of the county in which the application for registration is made
- be at least 17 years and 10 months old (you must be 18 to vote)
- not be finally convicted of a felony, or if a convicted felon, you must have fully discharged your punishment, including any incarceration, parole, supervision, period of probation or be pardoned.
- have not been declared mentally incompetent by final judgment of a court of law

### Mailing address:

Office of the Secretary of State  
Elections Division  
P.O. Box 12060  
Austin, TX 78711-2060

### Utah

Updated: 03-28-2008

**Registration Deadline** — 30 days before the election for mail-in applications; 15 days before the election for walk-in registrations at the county clerk's office.

**6. ID Number.** Your completed voter registration form must contain your state issued driver's license number or nonoperating identification number. If you do not have a driver's license or nonoperating identification, you must include the last four digits of your social security number. If you do not have a driver's license or a nonoperating identification or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the State.

**7. Choice of Party.** Declaring a party is not required in order to register to vote. However, Utah's

election law allows each political party to choose whom it will allow to vote in its primary election. If you do not affiliate with a party, you may be restricted from voting in the primary.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Utah you must:

- be a citizen of the United States
- have resided in Utah for 30 days immediately before the next election
- be at least 18 years old on or before the next election
- not be a convicted felon currently incarcerated for commission of a felony
- not be convicted of treason or crime against the elective franchise, unless restored to civil rights
- not be found to be mentally incompetent by a court of law

### Mailing address:

Office of the Lieutenant  
Governor  
P.O. Box 142325  
Salt Lake City, UT 84114

### Vermont

Updated: 07-29-2008

**Registration Deadline** — Delivered to the town clerk before 5:00 PM on the Wednesday before the election.

**6. ID Number.** You must provide your Vermont Driver's license number, or if none, the last 4 digits of your Social Security number. If you do not have a Vermont Driver's license or a Social Security number, please write "NONE" on the form. The Secretary of State's office will assign you a unique identifying number.

**7. Choice of Party.** Vermont does not require party registration to participate in any election.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Vermont you must:

- be a citizen of the United States
- be a resident of Vermont
- be 18 years of age on or before election day
- have taken the following Oath: You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the state of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person [Voter's Oath, Vermont Constitution, Chapter II, Section 42]

By signing in Box 9, you are attesting that you have sworn or affirmed the Vermont voter's oath as printed above.

### Mailing address:

Office of the Secretary of State  
Director of Elections  
26 Terrace Street  
Montpelier, VT 05609-1101

### Virginia

Updated: 11-30-2011

**Registration Deadline** — Delivered 22 days before the election.

**6. ID Number.** Your full social security number is required. Your social security number will appear on reports produced only for official use by voter registration and election officials and, for jury selection purposes, by courts.



## State Instructions

Article II, §2, Constitution of Virginia (1971).

**7. Choice of Party.** You do not have to register with a party if you want to take part in that party's primary election, caucus, or convention.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Virginia you must:

- be a citizen of the United States
- be a resident of Virginia and of the precinct in which you want to vote
- be 18 years old by the next May or November general election
- not have been convicted of a felony, or have had your civil rights restored
- not currently be declared mentally incompetent by a court of law

**Mailing address:**

Virginia State Board of Elections  
1100 Bank Street, 1st floor  
Richmond, VA 23219

### Washington

Updated: 9-24-2012

**Registration Deadline** — 29 days before the election (or delivered in-person to the local voter registration office until 8 days before the election).

**6. ID Number.** You must provide your Washington driver's license or state ID card number. If you do not have a Washington driver's license, or state ID card, you must provide the last four digits of your Social Security Number. Failure to provide this information may prevent your registration from being processed.

**7. Choice of Party.** You are not required to designate your party affiliation to register in Washington.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Washington you must:

- be a citizen of the United States
- be a legal resident of Washington State, your county and precinct for 30 days immediately preceding the election in which you want to vote
- be at least 18 years old by election day
- not be convicted of infamous crime, unless restored to civil rights

**Mailing address:**

Secretary of State  
Elections Division  
P.O. Box 40229  
Olympia, WA 98504-0229

### West Virginia

Updated: 09-12-2006

**Registration Deadline** — 21 days before the election.

**6. ID Number.** Enter your driver's license number. If you do not have a driver's license number, enter the last four numbers of your social security number. If you do not have a driver's license number or a social security number, an identification number will be assigned to you.

**7. Choice of Party.** You must register with a party if you want to take part in that party's primary election, caucus, or convention (unless you request the ballot of a party which allows independents to vote)

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in West Virginia you must:

- be a citizen of the United States

- live in West Virginia at the above address
- be 18 years old, or to vote in the primary be 17 years old and turning 18 before the general election
- not be under conviction, probation, or parole for a felony, treason or election bribery
- not have been judged "mentally incompetent" in a court of competent jurisdiction

**Mailing address:**

Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

### Wisconsin

Updated: 09-12-2006

**Registration Deadline** — Twenty (20) days before the election (or completed in the local voter registration office up to 5:00 pm. 1 day before the election, or completed at the polling place on election day).

**6. ID Number.** Provide your driver's license number, if you have no current and valid driver's license, the last 4 digits of your social security number or DOT-issued ID card number.

**7. Choice of Party.** Not required.

**8. Race or Ethnic Group.** Not required.

**9. Signature.** To register in Wisconsin you must:

- be a citizen of the United States
- be a resident of Wisconsin for at least 10 days
- be 18 years old
- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored

## State Instructions

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- not have been found by a court to be incapable of understanding the objective of the electoral process
- not make or benefit from a bet or wage depending on the result of an election
- not have voted at any other location, if registering on election day

**Mailing address:**

State Elections Board  
17 West Main Street, Suite 310  
P.O. Box 2973  
Madison, WI 53701-2973

### Wyoming

Updated: 03-01-2006

Wyoming by law, cannot accept this form unless State law is changed.

Aug 01 2013 4:51PM HP LASERJET FAX

p. 4




Office of the Executive Director  
 U.S. Election Assistance Commission  
 1201 New York Ave. NW – Suite 300  
 Washington, DC 20005

November 9, 2011

**MEMORANDUM**

**TO:** Commissioner Donetta Davidson  
 Commissioner Gineen Bresso



**FROM:** Thomas Wilkey, Executive Director

**SUBJECT:** State Requests to Change their State-Specific Instructions on the National Mail Voter Registration Form

The National Voter Registration Act (NVRA), as amended by the Help America Vote Act (HAVA), transfers authority from the Federal Election Commission (FEC) to EAC to develop a Federal Mail Voter Registration Application Form (Federal Form) in consultation with the states and to prescribe regulations applicable to the Federal Form. The NVRA requires states to use and accept the Federal Form for federal elections. Section 9428.6(c) of the NVRA regulations (11CFR 9428.6(c)) specifically provides that “Each state election official shall notify the Commission, in writing, within thirty days of any change to the state’s voter eligibility requirements or other information reported under this section.”

Accordingly, EAC periodically receives requests from States to update their respective portion of the State-specific instructions contained on the Federal Form. Currently, EAC has no formally adopted written procedures or official policies in place regarding the processing of such requests. Since 2008, the Commission has voted on each submitted request. However, with the current lack of a quorum, no votes on these requests are possible. It is essential, however, that EAC continue to process these requests. I am, therefore, immediately implementing an interim procedure delegating to staff in the Division of Research, Policy and Programs (RPP) the ability to process State requests pending the establishment of a quorum. The interim procedure is as follows:

- All State requests must be from the Chief Election Officer of the State or his/her duly authorized agent on appropriate State letter-head.
- RPP staff is authorized to take action on two types of requests: 1) a State request to modify their mailing address and 2) a request for a change in the State-specific instructions if the proposed modification is required by a change in State law. This would include a request that clarifies existing state law.

1

Aug 01 2013 4:51PM HP LASERJET FAX

p. 5

- Upon review of the State request and after consultation with the Office of General Counsel, RPP staff shall make recommendations to the Executive Director.
- The Executive Director will make the final determination with regard to each State request.
- Requests that raise issues of broad policy concern to more than one State will be deferred until the re-establishment of a quorum.

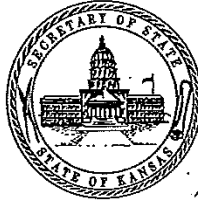
This procedure is consistent with past precedent at the EAC. Prior to 2008, EAC staff approved requests from States to modify their State-specific instructions on the Federal Form.

Should you have any questions, please do not hesitate to contact me.

cc: Ms. Alice Miller,  
Chief Operating Officer

Karen Lynn-Dyson, Director  
Division of Research, Policy and Programs

**KRIS W. KOBACH**  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4564

## STATE OF KANSAS

August 9, 2012

Ms. Alice Miller  
Acting Executive Director  
Election Assistance Commission  
1201 New York Ave., NW  
Washington, DC 20005

Dear Ms. Miller:

We have reviewed the instructions for the State of Kansas in the National Voter Registration Mail Application Form and we request the following revisions.

1. In the paragraph titled "Registration Deadline," replace "15" with "21." Kansas legislation was enacted in 2011 changed the voter registration deadline from the 15<sup>th</sup> day before each election to the 21<sup>st</sup> day.
2. In the last bullet in the section titled "Signature," delete the words "for mental incompetence." The relevant statute, K.S.A. 25-2316c, in Subsection (f), Item (3), states that a person's voter registration may be canceled if "a court of competent jurisdiction orders removal of the name of a registered voter from registration lists." Mental incompetence is not included as a reason for cancellation. That bullet point should read: "not be excluded from voting by a court of competent jurisdiction."
3. Legislation that was enacted in 2011 amended K.S.A. 25-2309 by adding Subsection (l), which directs that any completed application for registration shall be "accepted" but the registration shall be suspended until the applicant has provided satisfactory evidence of United States citizenship." Subsection (u) of K.S.A. 25-2309 specifies the effective date of this provision as January 1, 2013.

We suggest the insertion of an additional bullet after the third bullet in the "Signature" section: "An applicant must provide qualifying evidence of U.S. citizenship prior to the first election day after applying to register to vote."

Thank you for your consideration of these revisions. Please contact me if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Brad Bryant".

Brad Bryant  
Election Director  
Kansas Secretary of State's Office



Division for Research, Policy and Programs  
U.S. Election Assistance Commission  
1201 New York Ave. NW – Suite 300  
Washington, DC 20005

October 11, 2012

Mr. Brad Bryant  
Election Director  
Office of the Kansas Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 S. W. Tenth Ave  
Topeka, KS 66612-1594

Dear Mr. <sup>Brad</sup>Bryant:

Reference is made your correspondence dated August 9, 2012 requesting changes to the Kansas portion of the state specific instructions of the National Mail Voter Registration Form (Federal Form) and our subsequent telephone conversation on August 24, 2012 regarding your request. This correspondence is in response to our telephone conversation of October 10 wherein you asked me to clarify in writing the position of the EAC on your request.

Your letter of August 9 requested EAC to revise its State-specific instructions on the Federal Form by making the following changes:

Modify the section pertaining to the Registration Deadline as follows:

1. **Registration Deadline** – Postmarked or delivered 21 days before the election.

The section currently refers to the deadline as being 15 days before the election.

2. Modify Instruction No. 9 (Signature) to clarify requirements regarding mental competence.

3. Add an additional bullet be added to No. 9 (Signature) to read:


- An applicant must provide qualifying evidence of U.S. citizenship prior to the first Election Day after applying to vote.

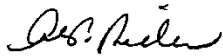
It is my understanding that the request to modify the state-specific instructions listed above is a result of state statutory amendment. The proposed amendments in numbers 1 and 2 do not

appear to violate any Federal law or have broad policy implications and EAC staff is, therefore, prepared to approve them, subject to review by counsel.

Number 3, however, appears to have broad policy impact and would require consideration and approval of the EAC Commissioners. The authority of staff to modify the state instructions is limited to issues that do not have any policy impact. As you know, EAC currently has no Commissioners. Therefore, we cannot take any action on number 3.

EAC plans to move ahead and take action on numbers 1 and 2 but will postpone action on number 3 until a quorum is established on the Commission. Please let me know if you have any questions.

Sincerely, 



Alice P. Miller, Esq.  
Chief Operating Officer &  
Acting Executive Director

**KRIS W. KOBACH**  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4575  
www.sos.ks.gov

## STATE OF KANSAS

June 18, 2013

Ms. Alice Miller  
Acting Executive Director  
Election Assistance Commission  
1201 New York Ave., NW  
Washington, DC 20005

Dear Ms. Miller:

Our office is once again requesting that the EAC alter the federal form to include information that the State of Kansas deems necessary to determine eligibility to vote. We renew our request following the recent decision of the United States Supreme Court, *Arizona Et Al. v. Inter Tribal Council of Arizona, Inc Et Al.* Our office once again requests the following revision to the instructions for the State of Kansas in the National Voter Registration Mail Application Form. Our prior request correspondence to you was dated August 9, 2012. This revision will bring the NVRA instructions into compliance with Kansas statute.

1. Legislation that was enacted in 2011 amended K.S.A. 25-2309 by adding Subsection (l), which directs that any completed application for registration shall be accepted but the registration shall be in "suspense" status until the applicant has provided satisfactory evidence of United States citizenship. Subsection (u) of K.S.A. 25-2309 specifies the effective date of this provision as January 1, 2013. A voter in suspense may vote a provisional ballot which will not be counted until the voter's registration is taken out of suspense status.

We request the insertion of an additional bullet after the third bullet in the "Signature" section along with the following text: "To cast a regular ballot an applicant must provide qualifying evidence of U.S. citizenship prior to the first election day after applying to register to vote." Such a person may cast a provisional ballot if such person's registration is still in suspense on election day.

Again, please note this is not the first time our office has made this request. Your prompt consideration of the revisions and response is appreciated. Please contact me if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris W. Kobach".

Kris W. Kobach  
Secretary of State  
Office of the Kansas Secretary of State



Aug 01 2013 4:51PM HP LASERJET FAX

p. 3

C



**U.S. Election Assistance Commission  
1201 New York Ave. NW – Suite 300  
Washington, DC 20005**

July 31, 2013

Honorable Kris W. Kobach  
Secretary of State  
Office of the Kansas Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 S.W. 10<sup>th</sup> Avenue  
Topeka, KS 66612-1594

Dear Secretary Kobach:

Thank you for your correspondence dated June 18, 2013 to this office requesting modification of instructions relative to Kansas on the national mail voter registration form (Federal Form). Please be advised that upon review the U.S. Election Assistance Commission (EAC) staff cannot process your request due to a lack of a quorum on the Commission.

As you know, the EAC currently has four vacancies on the Commission. The EAC staff is authorized to process State requests to modify state-specific instructions on the Federal Form but according to current procedures must defer any requests that raise "issues of broad policy concern to more than one state" until EAC has a quorum. I have attached a copy of the memo to EAC Commissioners Donetta Davidson and Gineen Bresso from Thomas Wilkey, Executive Director, dated November 9, 2011 which delineates the process EAC staff must follow when receiving State requests to modify their state-specific instructions on the Federal Form.

Your correspondence indicates that the result of the authorizing Kansas statute and corresponding modification to the state-specific instruction on the Federal Form would be that the Federal Form would be rejected in Kansas without the proper citizenship documentation. Failure to "accept and use" the Federal Form as it is currently configured has broad policy impact that could affect more than one State. Therefore, EAC must defer your request until the reestablishment of a quorum at EAC.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alice Miller".

Alice Miller,  
Acting Executive Director &  
Chief Operating Officer

Aug 01 2013 4:51PM HP LASERJET FAX

p. 4




Office of the Executive Director  
 U.S. Election Assistance Commission  
 1201 New York Ave. NW – Suite 300  
 Washington, DC 20005

November 9, 2011

**MEMORANDUM**

**TO:** Commissioner Donetta Davidson  
 Commissioner Gineen Bresso



**FROM:** Thomas Wilkey, Executive Director

**SUBJECT:** State Requests to Change their State-Specific Instructions on the National Mail Voter Registration Form

The National Voter Registration Act (NVRA), as amended by the Help America Vote Act (HAVA), transfers authority from the Federal Election Commission (FEC) to EAC to develop a Federal Mail Voter Registration Application Form (Federal Form) in consultation with the states and to prescribe regulations applicable to the Federal Form. The NVRA requires states to use and accept the Federal Form for federal elections. Section 9428.6(c) of the NVRA regulations (11CFR 9428.6(c)) specifically provides that “Each state election official shall notify the Commission, in writing, within thirty days of any change to the state’s voter eligibility requirements or other information reported under this section.”

Accordingly, EAC periodically receives requests from States to update their respective portion of the State-specific instructions contained on the Federal Form. Currently, EAC has no formally adopted written procedures or official policies in place regarding the processing of such requests. Since 2008, the Commission has voted on each submitted request. However, with the current lack of a quorum, no votes on these requests are possible. It is essential, however, that EAC continue to process these requests. I am, therefore, immediately implementing an interim procedure delegating to staff in the Division of Research, Policy and Programs (RPP) the ability to process State requests pending the establishment of a quorum. The interim procedure is as follows:

- All State requests must be from the Chief Election Officer of the State or his/her duly authorized agent on appropriate State letter-head.
- RPP staff is authorized to take action on two types of requests: 1) a State request to modify their mailing address and 2) a request for a change in the State-specific instructions if the proposed modification is required by a change in State law. This would include a request that clarifies existing state law.

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Aug 01 2013 4:51PM HP LASERJET FAX

p. 5

- Upon review of the State request and after consultation with the Office of General Counsel, RPP staff shall make recommendations to the Executive Director.
- The Executive Director will make the final determination with regard to each State request.
- Requests that raise issues of broad policy concern to more than one State will be deferred until the re-establishment of a quorum.

This procedure is consistent with past precedent at the EAC. Prior to 2008, EAC staff approved requests from States to modify their State-specific instructions on the Federal Form.

Should you have any questions, please do not hesitate to contact me.

cc: Ms. Alice Miller,  
Chief Operating Officer

Karen Lynn-Dyson, Director  
Division of Research, Policy and Programs

**KRIS W. KOBACH**  
Secretary of State



Memorial Hall, 1st Floor  
120 S.W. 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4575  
www.sos.ks.gov

## STATE OF KANSAS

August 2, 2013

Ms. Alice Miller  
Acting Executive Director  
Election Assistance Commission  
1201 New York Ave., NW  
Washington, DC 20005

Dear Ms. Miller:

I am in receipt of your letter, dated July 31, 2013, in which you informed our office that the Election Assistance Commission (EAC) is unable, due to a lack of quorum on the Commission, to process the requests previously made by my office for a modification of the instructions relative to Kansas on the national mail voter registration form (Federal Form). Certain portions of your letter lead me to believe that the EAC has misunderstood the position of my office regarding Kansas's responsibility to "accept and use" the Federal Form.

Your letter suggests that Kansas will not "accept and use" the Federal Form. That is incorrect. Indeed, I have specifically instructed county election officers in Kansas to accept the Federal Form without proof of citizenship. However, for the time being a voter who uses the Federal Form and fails to provide proof of citizenship will only be eligible to vote in *federal* elections. As you are no doubt aware, 42 U.S.C. § 1973gg-4(a)(1) requires Kansas to "accept and use the [Federal Form] for the registration of voters *in elections for Federal office.*"

Therefore, Kansas will accept and use Federal Form registrations submitted without proof of citizenship documents to register voters for elections for Federal office *until the EAC adds the Kansas-specific instruction that our office has requested to the Federal Form or until Kansas is otherwise relieved of that duty by a court of competent jurisdiction.* When the Kansas-specific instruction is added, applicants using the Federal Form (with documentation proving citizenship) may register for *both* federal and state elections. I have attached a copy of the email that my office recently sent to Kansas election officers in that regard.

In addition, I wish to remove a possible ambiguity in the language of our proposed Kansas-specific instruction as contained in my June 18, 2013, letter to your office. To help clarify our requested instruction, we suggest the following modification to our proposed instruction: "To cast a regular ballot an applicant must provide evidence of U.S. citizenship prior to the ~~first~~ election day ~~after applying to register to vote.~~" I hope this modification clarifies the nature of our proposed Kansas-specific instruction.

There is no lawful reason why the staff of the Division of Research, Policy, and Programs of the EAC should not approve the addition of our requested Kansas-specific instruction to the Federal Form. Please confirm as soon as possible that you now understand how Kansas will treat the use of the Federal Form without proof of citizenship until the EAC modifies the Kansas-specific instructions to the Federal Form. I very much appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris W. Kobach". The signature is fluid and cursive, with a large initial "K" and "W".

Kris W. Kobach  
Secretary of State  
Office of the Kansas Secretary of State

Attachment

**Bryant, Brad [KSOS]**

---

**From:** Bryant, Brad [KSOS]  
**Sent:** Tuesday, July 30, 2013 9:39 AM  
**To:** CEO list serve (county-election-officials@ink.org)  
**Subject:** Supreme Court decision and Kansas voter registration

To all Kansas county election officers:

This message is intended to provide additional guidance regarding voter registration procedures and the CEO's responsibilities when implementing the dual registration system resulting from the recent U.S. Supreme Court decision in the case of *Arizona v. Inter Tribal Council*. As the Supreme Court made clear, its decision applies only to "federal registration forms" and covers *only federal elections*. States remain free to require proof of citizenship from voters who seek to also vote in state elections.

KSA 25-2309(a) allows any qualified elector to register to vote in Kansas using either the Kansas voter registration form or the national mail voter registration form, which is also referred to as the "federal form." The federal form may be viewed on the federal Election Assistance Commission's web site here:

[http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration\\_1209\\_en9242012.pdf](http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_1209_en9242012.pdf)

Do not confuse the term "federal form" with the Federal Post Card Application (FPCA), which is used by military & overseas citizens to apply for ballots under the federal UOCAVA law.

State law allows applicants to use either the state form or the federal form for voter registration because states are required to "accept and use" the federal form. This is part of the National Voter Registration Act of 1993 (NVRA, or "motor voter") and was reaffirmed by the Supreme Court's decision.

Whichever form a person uses, if an applicant does not submit a U.S. citizenship document, you must follow up and request one.

This dual registration system results in the following four scenarios:

Using the Kansas form

(1) A person who applies for voter registration using the Kansas form and submits a citizenship document is eligible to vote in all Kansas elections—federal, state and local.

(2) A person who applies using the Kansas form and does not submit a citizenship document is not eligible to vote in federal, state or local elections. This applicant should be issued a provisional ballot, but the ballot will not count. It would count only if an error was discovered after submission of the provisional ballot.

Using the federal form

(3) A person who applies using the federal form and submits a citizenship document is eligible to vote in all Kansas elections—federal, state and local.

(4) A person who applies using the federal form and does not submit a citizenship document is eligible to vote only in federal elections but is not eligible to vote in state or local elections. This federal-only registrant may have his/her votes counted only for the offices of President/Vice President, U.S. Senator, and U.S. Representative.

Many counties probably have had very few federal forms submitted over the years. Regardless of the number, beginning now you must track which voter registration applicants in your county have applied using the federal form since January 1, 2013. This means you should take note when a federal form comes to your office and keep a list of the names of individuals who submit them. One of the Statuses or Reasons in ELVIS will be changed to assist in tracking those who use the federal form. Also, you should continue to request citizenship documents from those who fail to submit them with their applications, regardless of whether they used the Kansas or the federal form.

We will provide more detailed guidance regarding how this system will be administered when it is finalized.

**BRAD BRYANT** | State Election Director

Kansas Secretary of State | 785-296-4559 P | 785-291-3051 F | [www.sos.ks.gov](http://www.sos.ks.gov)  
Memorial Hall, 1st Floor | 120 S.W. 10th Avenue | Topeka, KS 66612-1594

Order a Kansas flag online [here](#). It's easy!



**U.S. Election Assistance Commission (EAC)**  
**1201 New York Ave. NW – Suite 300**  
**Washington, DC 20005**

August 6, 2013

Honorable Kris W. Kobach  
Secretary of State  
Office of the Kansas Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 S.W. 10<sup>th</sup> Avenue  
Topeka, KS 66612-1594

Dear Secretary Kobach:

Thank you for the clarification provided in your correspondence dated August 2, 2013 regarding the Kansas policy on acceptance and use of the national mail voter registration form (Federal Form).

Please be advised that in deliberating our response of July 31, 2013, EAC was considering the language of your June 18, 2013 correspondence, wherein you advised:

Legislation that was enacted in 2011 amended K.S.A. 25-2309 by adding Subsection (l), which directs that any completed application for registration shall be accepted but the registration shall be in “suspense” status until the applicant has provided satisfactory evidence of United States citizenship. Subsection (u) of K.S.A. 25-3009 specifies the date of this provision as January 1, 2013. A voter in suspense may vote a provisional ballot which will not be counted until the voter’s registration is taken out of suspense status.

We also reviewed K.S.A 25-2309 (l) which provides in relevant part:

(l) The county election officer or secretary of state’s office shall accept any completed application for registration, *but an applicant shall not be registered until the applicant has provided satisfactory evidence of United States citizenship.....* After a person has submitted satisfactory evidence of citizenship, the county election officer shall indicate this information in the person’s permanent voter file. (*Emphasis added*)

Thus the language of your correspondence and the controlling Kansas statute suggests that a Federal Form would not be accepted without the “satisfactory evidence of citizenship.” This is further confused by the inclusion of a reference to the national mail voter registration mail application in K.S.A. 25-2309 (a) which provides for the types of voter registration applications used by applicants in Kansas. I hope you can understand and appreciate the basis for our earlier decision.

As I indicated in my previous correspondence, the EAC currently has four vacancies and the EAC staff must defer any requests that raise “issues of broad policy concern to more than one state” until EAC has a quorum. Our July 31 letter included a copy of the memorandum from Mr. Thomas Wilkey, the previous Executive Director, which delineates the process EAC staff must follow when considering State requests to modify their state-specific instructions on the Federal Form. The memo is also available on the EAC website.



Secretary Kris W. Kobach  
August 6, 2013

Your latest correspondence requests that a revised form of the instruction referred to in your letter of June 18, 2013 be included in the Kansas state-specific instructions on the Federal Form even though, as you indicate in your latest correspondence, Kansas “will accept and use the Federal Form registrations submitted without proof of citizenship documents to register voters for elections for Federal office.” You advise that “When the Kansas-specific instruction is added, applicants using the Federal Form (with documentation proving citizenship) may register for *both* federal and state elections.” (*Emphasis supplied*) The addition of the language would thus have applicability to voter registration for state elections but have no impact on procedures already in place for federal elections.

EAC staff believes that this request raises issues of policy concern that would impact other states. First, in granting the request EAC would be authorizing the placement of an instruction on the Federal Form applicable to registering to vote in state elections, not federal elections. The inclusion of instructions on the Federal Form applicable only to state and/or local elections would be a significant change in policy for EAC. EAC is authorized to place instructions on the Federal Form for federal elections.

Second, citizenship documentation is not addressed in the National Voter Registration Act of 1993 or the Help America Vote Act of 2002 and the inclusion of such information with the Federal Form as it is currently designed constitutes a policy question which EAC Commissioners must decide. EAC staff has no authority to establish policy for the EAC.

EAC staff, therefore, has no alternative but to defer your request until the reestablishment of a quorum at EAC.

Sincerely,

A handwritten signature in blue ink that reads "Alice Miller" with a stylized flourish at the end.

Alice Miller,  
Acting Executive Director &  
Chief Operating Officer

AN INITIATIVE MEASURE

AMENDING SECTIONS 16-152, 16-166 AND 16-579, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 46-140.01; RELATING TO THE ARIZONA TAXPAYER AND CITIZEN PROTECTION ACT.

1 Be it enacted by the People of the State of Arizona:

2 Section 1. Short title

3 This act may be cited as the "Arizona Taxpayer and Citizen Protection Act".

4 Sec. 2. Findings and declaration

5 This state finds that illegal immigration is causing economic hardship to this state and that  
6 illegal immigration is encouraged by public agencies within this state that provide public benefits  
7 without verifying immigration status. This state further finds that illegal immigrants have been given a  
8 safe haven in this state with the aid of identification cards that are issued without verifying immigration  
9 status, and that this conduct contradicts federal immigration policy, undermines the security of our  
10 borders and demeans the value of citizenship. Therefore, the people of this state declare that the public  
11 interest of this state requires all public agencies within this state to cooperate with federal immigration  
12 authorities to discourage illegal immigration.

13 Sec. 3. Section 16-152, Arizona Revised Statutes, is amended to read:

14 16-152. Registration form

15 A. The form used for the registration of electors shall contain:

- 16 1. The date the registrant signed the form.
- 17 2. The given name of the registrant, middle name, if any, and surname.
- 18 3. Complete address of actual place of residence, including street name and number, apartment  
19 or space number, city or town and zip code, or such description of the location of the residence that it can  
20 be readily ascertained or identified.
- 21 4. Complete mailing address, if different from residence address, including post office address,  
22 city or town, zip code or other designation used by the registrant for receiving mail.
- 23 5. Party preference.
- 24 6. Telephone number, unless unlisted.
- 25 7. State or country of birth.
- 26 8. Date of birth.
- 27 9. Occupation.
- 28 10. Indian census number (optional to registrant).
- 29 11. Father's name or mother's maiden name.
- 30 12. The last four digits of the registrant's social security number (optional to registrant).
- 31 13. A statement as to whether or not the registrant is currently registered in another state, county  
32 or precinct, and if so, the name, address, county and state of previous registration.
- 33 14. A statement that the registrant is a citizen of the United States.
- 34 15. A statement that the registrant will be eighteen years of age on or before the date of the next  
35 general election.
- 36 16. A statement that the registrant has not been convicted of treason or a felony, or if so, that the  
37 registrant's civil rights have been restored.
- 38 17. A statement that the registrant is a resident of this state and of the county in which the  
39 registrant is registering.
- 40 18. A statement that executing a false registration is a class 6 felony.
- 41 19. The signature of the registrant.

1           20. If the registrant is unable to sign the form, a statement that the affidavit was completed  
2 according to the registrant's direction.

3           21. A statement that if an applicant declines to register to vote, the fact that the applicant has  
4 declined to register will remain confidential and will be used only for voter registration purposes.

5           22. A statement that if an applicant does register to vote, the office at which the applicant submits  
6 a voter registration application will remain confidential and will be used only for voter registration  
7 purposes.

8           23. A STATEMENT THAT THE APPLICANT SHALL SUBMIT EVIDENCE OF UNITED  
9 STATES CITIZENSHIP WITH THE APPLICATION AND THAT THE REGISTRAR SHALL REJECT  
10 THE APPLICATION IF NO EVIDENCE OF CITIZENSHIP IS ATTACHED.

11           B. A duplicate voter receipt shall be provided with the form that provides space for the name,  
12 street address and city of residence of the applicant, party preference and the date of signing. The voter  
13 receipt is evidence of valid registration for the purpose of casting a ballot to be verified as prescribed in  
14 section 16-584, subsection B.

15           C. The state voter registration form shall be printed in a form prescribed by the secretary of  
16 state.

17           D. The county recorder may establish procedures to verify whether a registrant has successfully  
18 petitioned the court for an injunction against harassment pursuant to section 12-1809 or an order of  
19 protection pursuant to section ~~12-1810~~ or 13-3602 and, if verified, to protect the registrant's residence  
20 address, telephone number or voting precinct number, if appropriate, from public disclosure.

21           Sec. 4. Section 16-166, Arizona Revised Statutes, is amended to read:

22           16-166. Verification of registration

23           A. Except for the mailing of sample ballots, a county recorder who mails an item to any elector  
24 shall send the mailing by nonforwardable first class mail marked with the statement required by the  
25 postmaster to receive an address correction notification. If the item is returned undelivered, the county  
26 recorder shall send a follow-up notice to that elector within three weeks of receipt of the returned notice.

27           The county recorder shall send the follow-up notice to the address that appears on the general county  
28 register or to the forwarding address provided by the United States postal service. The follow-up notice  
29 shall include a registration form and the information prescribed by section 16-131, subsection C and shall  
30 state that if the elector does not complete and return a new registration form with current information to  
31 the county recorder within thirty-five days, the name of the elector will be removed from the general  
32 register and transferred to the inactive voter list.

33           B. If the elector provides the county recorder with a new registration form, the county recorder  
34 shall change the general register to reflect the changes indicated on the new registration. If the elector  
35 indicates a new residence address outside that county, the county recorder shall forward the voter  
36 registration form to the county recorder of the county in which the elector's address is located. If the  
37 elector provides a new residence address that is located outside this state, the county recorder shall  
38 cancel the elector's registration.

39           C. The county recorder shall maintain on the inactive voter list the names of electors who have  
40 been removed from the general register pursuant to subsection A or E of this section for a period of four  
41 years or through the date of the second general election for federal office following the date of the notice  
42 from the county recorder that is sent pursuant to subsection E of this section.

43           D. On notice that a government agency has changed the name of any street, route number, post  
44 office box number or other address designation, the county recorder shall revise the registration records  
45 and shall send a new verification of registration notice to the electors whose records were changed.

46           E. The county recorder on or before May 1 of each year preceding a state primary and general  
47 election or more frequently as the recorder deems necessary may use the change of address information  
48 supplied by the postal service through its licensees to identify registrants whose addresses may have  
49 changed. If it appears from information provided by the postal service that a registrant has moved to a  
50 different residence address in the same county, the county recorder shall change the registration records  
51 to reflect the new address and shall send the registrant a notice of the change by forwardable mail and a  
52 postage prepaid preaddressed return form by which the registrant may verify or correct the registration  
53 information. If the registrant fails to return the form postmarked not later than twenty-nine days before  
54 the next election, the elector shall be removed from the general register and transferred to the inactive

1 voter list. If the notice sent by the recorder is not returned, the registrant may be required to provide  
 2 affirmation or confirmation of the registrant's address in order to vote. If the registrant does not vote in  
 3 an election during the period after the date of the notice from the recorder through the date of the  
 4 second general election for federal office following the date of that notice, the registrant's name shall be  
 5 removed from the list of inactive voters. If the registrant has changed residence to a new county, the  
 6 county recorder shall provide information on how the registrant can continue to be eligible to vote.

7 F. THE COUNTY RECORDER SHALL REJECT ANY APPLICATION FOR REGISTRATION  
 8 THAT IS NOT ACCOMPANIED BY SATISFACTORY EVIDENCE OF UNITED STATES  
 9 CITIZENSHIP. SATISFACTORY EVIDENCE OF CITIZENSHIP SHALL INCLUDE ANY OF THE  
 10 FOLLOWING:

11 1. THE NUMBER OF THE APPLICANT'S DRIVER LICENSE OR NONOPERATING  
 12 IDENTIFICATION LICENSE ISSUED AFTER OCTOBER 1, 1996 BY THE DEPARTMENT OF  
 13 TRANSPORTATION OR THE EQUIVALENT GOVERNMENTAL AGENCY OF ANOTHER STATE  
 14 WITHIN THE UNITED STATES IF THE AGENCY INDICATES ON THE APPLICANT'S DRIVER  
 15 LICENSE OR NONOPERATING IDENTIFICATION LICENSE THAT THE PERSON HAS PROVIDED  
 16 SATISFACTORY PROOF OF UNITED STATES CITIZENSHIP.

17 2. A LEGIBLE PHOTOCOPY OF THE APPLICANT'S BIRTH CERTIFICATE THAT  
 18 VERIFIES CITIZENSHIP TO THE SATISFACTION OF THE COUNTY RECORDER.

19 3. A LEGIBLE PHOTOCOPY OF PERTINENT PAGES OF THE APPLICANT'S UNITED  
 20 STATES PASSPORT IDENTIFYING THE APPLICANT AND THE APPLICANT'S PASSPORT  
 21 NUMBER OR PRESENTATION TO THE COUNTY RECORDER OF THE APPLICANT'S UNITED  
 22 STATES PASSPORT.

23 4. A PRESENTATION TO THE COUNTY RECORDER OF THE APPLICANT'S UNITED  
 24 STATES NATURALIZATION DOCUMENTS OR THE NUMBER OF THE CERTIFICATE OF  
 25 NATURALIZATION. IF ONLY THE NUMBER OF THE CERTIFICATE OF NATURALIZATION IS  
 26 PROVIDED, THE APPLICANT SHALL NOT BE INCLUDED IN THE REGISTRATION ROLLS  
 27 UNTIL THE NUMBER OF THE CERTIFICATE OF NATURALIZATION IS VERIFIED WITH THE  
 28 UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE BY THE COUNTY  
 29 RECORDER.

30 5. OTHER DOCUMENTS OR METHODS OF PROOF THAT ARE ESTABLISHED  
 31 PURSUANT TO THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

32 6. THE APPLICANT'S BUREAU OF INDIAN AFFAIRS CARD NUMBER, TRIBAL TREATY  
 33 CARD NUMBER OR TRIBAL ENROLLMENT NUMBER.

34 G. NOTWITHSTANDING SUBSECTION F OF THIS SECTION, ANY PERSON WHO IS  
 35 REGISTERED IN THIS STATE ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS  
 36 SECTION IS DEEMED TO HAVE PROVIDED SATISFACTORY EVIDENCE OF CITIZENSHIP AND  
 37 SHALL NOT BE REQUIRED TO RESUBMIT EVIDENCE OF CITIZENSHIP UNLESS THE PERSON  
 38 IS CHANGING VOTER REGISTRATION FROM ONE COUNTY TO ANOTHER.

39 H. FOR THE PURPOSES OF THIS SECTION, PROOF OF VOTER REGISTRATION FROM  
 40 ANOTHER STATE OR COUNTY IS NOT SATISFACTORY EVIDENCE OF CITIZENSHIP.

41 I. A PERSON WHO MODIFIES VOTER REGISTRATION RECORDS WITH A NEW  
 42 RESIDENCE BALLOT SHALL NOT BE REQUIRED TO SUBMIT EVIDENCE OF CITIZENSHIP.  
 43 AFTER CITIZENSHIP HAS BEEN DEMONSTRATED TO THE COUNTY RECORDER, THE PERSON  
 44 IS NOT REQUIRED TO RESUBMIT SATISFACTORY EVIDENCE OF CITIZENSHIP IN THAT  
 45 COUNTY.

46 J. AFTER A PERSON HAS SUBMITTED SATISFACTORY EVIDENCE OF CITIZENSHIP,  
 47 THE COUNTY RECORDER SHALL INDICATE THIS INFORMATION IN THE PERSON'S  
 48 PERMANENT VOTER FILE. AFTER TWO YEARS THE COUNTY RECORDER MAY DESTROY  
 49 ALL DOCUMENTS THAT WERE SUBMITTED AS EVIDENCE OF CITIZENSHIP.

50 Sec. 5. Section 16-579, Arizona Revised Statutes, is amended to read:

51 16-579. Procedure for obtaining ballot by elector

52 A. Every qualified elector, before receiving his ballot, shall announce his name and place of  
 53 residence in a clear, audible tone of voice to the election official in charge of the signature roster or  
 54 present his name and residence in writing AND SHALL PRESENT ONE FORM OF IDENTIFICATION

1 THAT BEARS THE NAME, ADDRESS AND PHOTOGRAPH OF THE ELECTOR OR TWO  
 2 DIFFERENT FORMS OF IDENTIFICATION THAT BEAR THE NAME AND ADDRESS OF THE  
 3 ELECTOR. If the name is found upon the precinct register by the election officer having charge thereof,  
 4 or the qualified elector presents a certificate from the county recorder showing that he is entitled by law  
 5 to vote in the precinct, the election official in charge of the signature roster shall repeat the name and the  
 6 qualified elector shall be allowed within the voting area.

7 B. Any qualified elector who is listed as having applied for an early ballot but who states that he  
 8 has not voted and will not vote an early ballot for this election or surrenders the early ballot to the  
 9 precinct inspector on election day shall be allowed to vote pursuant to the procedure set forth in section  
 10 16-584.

11 C. Each qualified elector's name shall be numbered consecutively by the clerks, with the number  
 12 upon the stub of the ballot delivered to him, and in the order of applications for ballots. The election  
 13 judge having charge of the ballots shall also write his initials upon the stub and the number of the  
 14 qualified elector as it appears upon the precinct register. The judge shall give the qualified elector only  
 15 one ballot, and his name shall be immediately checked on the precinct register.

16 D. Each qualified elector shall sign his name in the signature roster prior to receiving his ballot,  
 17 but an inspector or judge may sign the roster for an elector who is unable to sign because of physical  
 18 disability, and in that event the name of the elector shall be written with red ink, and no attestation or  
 19 other proof shall be necessary. The provisions of this subsection relating to signing the signature roster  
 20 shall not apply to electors casting a ballot using early voting procedures.

21 E. A person offering to vote at a special district election for which no special district register has  
 22 been supplied shall sign an affidavit stating his address and that he resides within the district boundaries  
 23 or proposed district boundaries and swearing that he is a qualified elector and has not already voted at  
 24 the election being held.

25 Sec. 6. Title 46, chapter 1, article 3, Arizona Revised Statutes, is amended by adding section 46-  
 26 140.01, to read:

27 46-140.01. Verifying applicants for public benefits; violation; classification; citizen  
 28 suits

29 A. AN AGENCY OF THIS STATE AND ALL OF ITS POLITICAL SUBDIVISIONS,  
 30 INCLUDING LOCAL GOVERNMENTS, THAT ARE RESPONSIBLE FOR THE ADMINISTRATION  
 31 OF STATE AND LOCAL PUBLIC BENEFITS THAT ARE NOT FEDERALLY MANDATED SHALL  
 32 DO ALL OF THE FOLLOWING:

33 1. VERIFY THE IDENTITY OF EACH APPLICANT FOR THOSE BENEFITS AND VERIFY  
 34 THAT THE APPLICANT IS ELIGIBLE FOR BENEFITS AS PRESCRIBED BY THIS SECTION.

35 2. PROVIDE ANY OTHER EMPLOYEE OF THIS STATE OR ANY OF ITS POLITICAL  
 36 SUBDIVISIONS WITH INFORMATION TO VERIFY THE IMMIGRATION STATUS OF ANY  
 37 APPLICANT FOR THOSE BENEFITS AND ASSIST THE EMPLOYEE IN OBTAINING THAT  
 38 INFORMATION FROM FEDERAL IMMIGRATION AUTHORITIES.

39 3. REFUSE TO ACCEPT ANY IDENTIFICATION CARD ISSUED BY THE STATE OR ANY  
 40 POLITICAL SUBDIVISION OF THIS STATE, INCLUDING A DRIVER LICENSE, TO ESTABLISH  
 41 IDENTITY OR DETERMINE ELIGIBILITY FOR THOSE BENEFITS UNLESS THE ISSUING  
 42 AUTHORITY HAS VERIFIED THE IMMIGRATION STATUS OF THE APPLICANT.

43 4. REQUIRE ALL EMPLOYEES OF THE STATE AND ITS POLITICAL SUBDIVISIONS TO  
 44 MAKE A WRITTEN REPORT TO FEDERAL IMMIGRATION AUTHORITIES FOR ANY  
 45 VIOLATION OF FEDERAL IMMIGRATION LAW BY ANY APPLICANT FOR BENEFITS AND THAT  
 46 IS DISCOVERED BY THE EMPLOYEE.

47 B. FAILURE TO REPORT DISCOVERED VIOLATIONS OF FEDERAL IMMIGRATION LAW  
 48 BY AN EMPLOYEE IS A CLASS 2 MISDEMEANOR. IF THAT EMPLOYEE'S SUPERVISOR KNEW  
 49 OF THE FAILURE TO REPORT AND FAILED TO DIRECT THE EMPLOYEE TO MAKE THE  
 50 REPORT, THE SUPERVISOR IS GUILTY OF A CLASS 2 MISDEMEANOR.

51 C. THIS SECTION SHALL BE ENFORCED WITHOUT REGARD TO RACE, RELIGION,  
 52 GENDER, ETHNICITY OR NATIONAL ORIGIN. ANY PERSON WHO IS A RESIDENT OF THIS  
 53 STATE SHALL HAVE STANDING IN ANY COURT OF RECORD TO BRING SUIT AGAINST ANY  
 54 AGENT OR AGENCY OF THIS STATE OR ITS POLITICAL SUBDIVISIONS TO REMEDY ANY

1 VIOLATION OF ANY PROVISION OF THIS SECTION, INCLUDING AN ACTION FOR MANDAMUS.  
2 COURTS SHALL GIVE PREFERENCE TO ACTIONS BROUGHT UNDER THIS SECTION OVER  
3 OTHER CIVIL ACTIONS OR PROCEEDING PENDING IN THE COURT.

4 Sec. 7. Severability

5 If a provision of this act or its application to any person or circumstance is held invalid, the  
6 invalidity does not affect other provisions or applications of the act that can be given effect without the  
7 invalid provision or application, and to this end the provisions of this act are severable.



MAR-06-2006 11:52 FROM:EAC

2025663128

TO:602 542 1575

P.2



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

March 6, 2006

Jan Brewer  
Arizona Secretary of State  
1700 West Washington Street, 7th Floor  
Phoenix, AZ 85007-2888

Dear Secretary Brewer,

This letter responds to your office's December 12, 2005 e-mail to the U.S. Election Assistance Commission (EAC) requesting that the EAC apply Arizona state policy (derived from Proposition 200) to the Federal Mail Voter Registration Form ("Federal Registration Form" or "Federal Form"). Specifically, the inquiry sought to apply proof of citizenship requirements for Arizona voter registration to the Federal Form registration process. This request was sent by Robert A. Flores, Voter Outreach Coordinator in response to the EAC's requests for updates pertaining to the Federal Registration Form. As you may know, use and acceptance of the Federal Form are mandated by the National Voter Registration Act of 1993, 42 U.S.C. §1973gg *et seq.*, (NVRA). The EAC is the Federal agency charged with regulating the development and substance of the Federal Form. (42 U.S.C. §1973gg-7(a)). After review of your request, the EAC concludes that the policies you propose would effectively result in a refusal to accept and use the Federal Registration Form in violation of Federal law (42 U.S.C. §1973gg-4(a)).

**Arizona's Policy.** On December 12, 2005, the office of the Arizona Secretary of State (Chief State Election Official) requested that the EAC apply new Arizona procedural requirements to the Federal Form. These new procedural requirements reflected proof of citizenship provisions recently adopted by the state in Proposition 200. Generally, proposition 200 requires Arizona registrants to submit additional proof of citizenship with their voter registration forms. This usually requires the individual to record, on the form, his or her driver's license number (or non-operating identification license) issued after October 1, 1996. If the registrant cannot provide this information (because they have no license or an older license) he or she will need to provide a copy of an alternative form of identification. These alternative forms include: a birth certificate, passport, certificate of naturalization number and other documents. This portion of Proposition 200 amended Arizona Revised Statute §§ 16-152 and 16-166, which set requirements for the State's registration form and verification of the form. The proposition did not amend Arizona's registration qualifications, found in Arizona Revised Statute §16-101. If Arizona were to apply this policy to its use and acceptance of the Federal Registration Form, the Federal Form's acceptance would be conditioned upon the receipt of supplemental documentation of citizenship. In this way, any registrant who failed to supplement their Federal Registration Form would have their form rejected, resulting in the loss of voting rights.

**Federal Authority To Regulate Elections.** It is a well settled matter of Constitutional law that the United States Congress, pursuant to Article I, Section 4 and

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Toll free: 1 (866) 747-1471



Article II, Section 1 of the U.S. Constitution, has the authority to pass laws regulating the manner in which Federal elections are held. This Federal authority has been broadly read by the Supreme Court to include the comprehensive Congressional regulation of a States' voter registration process for Federal elections. Voting Rights Coalition v. Wilson, 60 F.3d 1411, 1413-1414 (9<sup>th</sup> Cir. 1995), *cert. denied*, 516 U.S. 1093 (1996) (citing, Smiley v. Holm, 285 U.S. 355, 366 (1932)); Association of Community Organizations for Reform Now v. Edgar, 56 F.3d 791, 793 -794 (7<sup>th</sup> Cir. 1995) (citing Smiley, 285 U.S. at 366, Ex parte Siebold, 100 U.S. 371 (1879) and United States v. Original Knights of the Ku Klux Klan, 250 F.Supp 330, 351 - 355 (E.D.La 1965)); Association of Community Organizations for Reform Now v. Miller, 129 F.3d 833, 836 (6<sup>th</sup> Cir. 1995). The Constitution "explicitly grants Congress the authority either to 'make' laws regarding federal elections... or to 'alter' the laws initially promulgated by the states. Thus... article I, section 4 specifically grants Congress the authority to force states to alter their regulations regarding federal elections." Miller, 129 F.3d at 836.

In this way, while Article I, section 2 and the Seventeenth Amendment authorize States to set requirements regarding voter qualifications in a Federal election (Edgar at 794), this does not limit the Federal authority to set voter registration procedures for such elections. Voting Rights Coalition, at 1413. This is true even where States have declared voter registration to be a voting qualification (Wilson, at 1414) or where Federal registration requirements may indirectly make it more difficult for a State to enforce qualification requirements (Edgar at 794-795).

**National Voter Registration Act.** Consistent with its authority to regulate voter registration in Federal elections, Congress passed the NVRA. The NVRA's regulation of the voter registration process has been specifically and consistently upheld as constitutional by the Courts. Voting Rights Coalition, 60 F.3d F.3d 1411; Edgar, 56 F.3d 791; Miller, 129 F.3d 833. The NVRA mandates that States "*shall accept and use the mail voter registration application proscribed by the U.S. Election Assistance Commission pursuant to section 9(a)(2) for the registration of voters in elections for Federal office.*" 42 U.S.C. §1973gg-4(a) (emphasis added). The statute further allows States to create, use and accept their own form (in addition to the Federal form) if it meets the minimum NVRA criteria for the Federal form. 42 U.S.C. §1973gg-4(b). The EAC is the Federal agency charged with creating and regulating the Federal Form.<sup>1</sup> The NVRA requires the Federal Voter Registration Form to specify each voter eligibility requirement, contain an attestation that the applicant meets such requirements, and require the signature of the applicant. 42 U.S.C. §1973gg-7(b)(2). The Help America Vote Act (HAVA) has added the requirement that the Federal form include two check boxes for an applicant to affirm their citizenship and age. 42 U.S.C. §15483(b)(4).

**Discussion.** While Arizona has authority to determine registrant/voter qualifications, the manner in which it registers voters for Federal elections is subject to Federal regulation. The Federal Government, through the NVRA and the Federal Form has regulated the process of registering voters in Federal Elections. Acceptance of the

<sup>1</sup> The Help America Vote Act amended the National Voter Registration Act transferring regulatory authority over the Federal Form to the EAC. (See 42 U.S.C. §15532 and 42 U.S.C. §1973gg-7(a)).

MAR-06-2006 11:52 FROM:EAC

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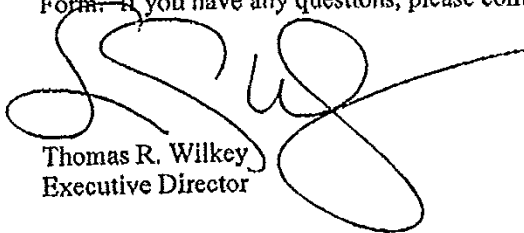
TO:602 542 1575

P.4

Federal Form is mandated by the NVRA. The Federal Form sets the proof required to demonstrate voter qualification. No state may condition acceptance of the Federal Form upon receipt of additional proof.

Arizona's voting qualifications remain unchanged and are contained in Arizona Revised Statute §16-101.<sup>2</sup> These qualifications are presently reflected on the Federal Form. The statutory changes Arizona has initiated in Proposition 200, which require some residents to submit documentary evidence of citizenship, do not alter the state's voter qualifications. Rather, the statutory scheme is merely an additional means to document or prove the existing voter eligibility requirement of citizenship. As such, Arizona's statutory changes deal with the manner in which registration is conducted and are, therefore, preempted by Federal law. The NVRA, HAVA and the EAC have determined the manner in which voter eligibility shall be documented and communicated on the Federal form. State voter requirements are documented by the applicant via a signed attestation and, in the case of citizenship, a "checkbox." (42 U.S.C. §1973gg-7(b)(2) and 42 U.S.C. §15483(b)(4)). This Federal scheme has regulated the area and preempts state action. Congress specifically considered whether states should retain authority to require that registrants provide proof of citizenship, but rejected the idea as "not necessary or consistent with the purpose of [the NVRA]."<sup>3</sup> The state may not mandate additional registration procedures that condition the acceptance of the Federal Form. The NVRA requires States to both "accept" and "use" the Federal Form. Any Federal Registration Form that has been properly and completely filled-out by a qualified applicant and timely received by an election official must be accepted in full satisfaction of registration requirements. Such acceptance and use of the Federal Form is subject only to HAVA's verification mandate. (42 U.S.C. §15483).

**Conclusion.** While Arizona may apply Proposition 200 requirements to the use of its state registration form in Federal elections (if the form meets the minimum requirements of the NVRA), the state may not apply the scheme to registrants using the Federal Registration Form. Consistent with the above, Arizona may not refuse to register individuals to vote in a Federal election for failing to provide supplemental proof of citizenship, if they have properly completed and timely submitted the Federal Registration Form. If you have any questions, please contact the undersigned at (202) 566-3100.



Thomas R. Wilkey  
Executive Director

<sup>2</sup> These qualifications require a registrant to demonstrate that he or she is (1) a citizen of the United States, (2) at least 18 years of age before the date of the next general election, (3) a resident of Arizona for at least twenty-nine days, (4) has not been convicted of a felony unless restored to civil rights and (5) has not been determined mentally incapacitated.

<sup>3</sup> *Joint Conference Committee Report on the National Voter Registration Act of 1993*, H. Rept. 103-66 (April 28, 1993).



**JAN BREWER**  
SECRETARY OF STATE  
STATE OF ARIZONA

March 13, 2006

Paul S. DeGregorio, Chairman  
United States Election Assistance Commission  
1225 New York Avenue, N.W.  
Washington, DC 20005

Dear Chairman DeGregorio,

As the Secretary of State and Chief Election Officer for the State of Arizona, I have significant concerns about the March 6, 2006, letter from your executive director asserting that Arizona may not implement its proof of citizenship law with respect to voters who register using a Federal Mail Voter Registration Form (Federal Form). In my mind, such a policy is completely inconsistent, unlawful, and without merit.

The executive director's opinion is incorrect and unlawfully prevents the State of Arizona from implementing an important voting security measure with respect to those voters using the Federal Form. Arizona's proof of citizenship requirement was passed by over one million voters in 2004, and was pre-cleared by the U.S. Department of Justice (DOJ) on January 24, 2005. In addition, DOJ separately pre-cleared our Arizona Voter Registration Form on May 6, 2005, which includes the proof of citizenship instructions now required of all citizens registering to vote in Arizona. The DOJ has civil enforcement power over the National Voter Registration Act, and has expressed no concern about Arizona's proof of citizenship requirement when registering to vote.

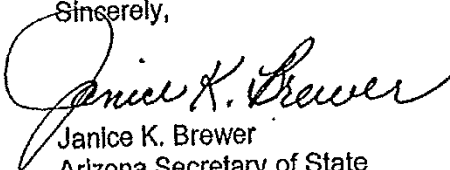
As I stated in my March 9, 2006, letter, I believe your letter provides questionable legal support for its conclusion. After consulting with the Arizona Attorney General, I will instruct Arizona's county recorders to continue to administer and enforce the requirement that all voters provide evidence of citizenship when registering to vote as specified in A.R.S. § 16-166(F).

State Capitol: 1700 West Washington Street, 7th Floor  
Phoenix, Arizona 85007-2888  
Telephone (602) 542-4285 Fax (602) 542-1575

Paul S. DeGregorio, Chairman  
March 13, 2006  
Page 2 of 2

As I requested of you in December, I urge you to instruct voters using the Federal Form to register in Arizona that they provide sufficient proof of citizenship. To do otherwise would be incredibly irresponsible and may unnecessarily disenfranchise voters using the Federal Form to register.

Sincerely,



Janice K. Brewer  
Arizona Secretary of State

JKB:kt



**JAN BREWER**  
SECRETARY OF STATE  
STATE OF ARIZONA

June 20, 2006

Paul S. DeGregorio, Chairman  
United States Election Assistance Commission  
1225 New York Avenue N.W.  
Washington, DC 20005

Dear Chairman DeGregorio:

Yesterday the United States District Court for the District of Arizona in *Gonzalez v. State of Arizona*, No. CV 06-1268-PHX-ROS, held that the National Voter Registration Act's (NVRA) language regarding the Federal Mail Voter Registration Form (Federal Form) does not preempt Arizona's requirement that individuals present proof of citizenship at the time they attempt to register using that form.

As you know, the correspondence dated March 6, 2006, from the Election Assistance Commission's Executive Director, Thomas Wilkey, precipitated this lawsuit and was used as an exhibit by the plaintiffs. In that letter Mr. Wilkey asserted that Arizona's proof of citizenship requirement when registering to vote with the federal form conflicted with the NVRA. Yesterday's 15 page court opinion and order clearly ruled to the contrary:

Determining whether an individual is a United States citizen is of paramount importance when determining his or her eligibility to vote. In fact, the NVRA repeatedly mentions that its purpose and goal is to increase registration of "eligible citizens." 42 U.S.C. § 1973gg(b)(1)-(2). Providing proof of citizenship undoubtedly assists Arizona in assessing the eligibility of applicants. Arizona's proof of citizenship requirement *does not conflict* with the plain language of the NVRA.

Order at p. 9. (Emphasis added)


Given the court's sound rejection of Mr. Wilkey's analysis, I once again implore you to properly instruct Arizona voters using the Federal Form about our proof of citizenship requirement. To do otherwise would further disenfranchise Arizona voters using the federal form who unknowingly rely on your erroneous instructions. I am sure that the Commission agrees with me that we should do everything possible to properly

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Phoenix, Arizona 85007-2888  
Telephone (602) 542-4285 Fax (602) 542-1575

educate and inform voters about our new voter registration requirements, and I look forward to your cooperation in this matter.

For your convenience, I have attached the proposed Arizona instructions that were submitted by my staff to yours on December 12, 2005.

Sincerely,

  
Janice K. Brewer  
Arizona Secretary of State

Enclosure

cc: The Honorable John McCain  
The Honorable John Kyl  
The Honorable Rick Renzi  
The Honorable Trent Franks  
The Honorable John Shadegg  
The Honorable Ed Pastor  
The Honorable J.D. Hayworth  
The Honorable Jeff Flake  
The Honorable Raul Grijalva  
The Honorable Jim Kolbe  
The Honorable Terry Goddard  
The Honorable Sam Reed, President,  
National Association of Secretaries of State  
Kevin Kennedy, President,  
National Association of State Elections Directors

## 4 Revised 10/29/2003 State Instructions

### Arizona

**Registration Deadline** — 29 days before the election.

**6. ID Number.** Your completed voter registration form must contain the number of your Arizona driver license, or non-operating identification license issued pursuant to A.R.S. § 28-3165, if the license is current and valid. If you do not have a current and valid Arizona driver license or non-operating identification license, you must include the last four digits of your social security number if one has been issued to you. If you do not have a current and valid driver license or non-operating identification license or a social security number, please write "NONE" on the form. A unique identifying number will be assigned by the Secretary of State.

If this is your first time registering to vote in Arizona or you have moved to another county in Arizona, your voter registration form must also include proof of citizenship or the form will be rejected. If you have an Arizona driver license or non-operating identification license issued after October 1, 1996, this will serve as proof of citizenship and no additional documents are needed. If not, you must attach proof of citizenship to the form. Only one acceptable form of proof is needed to register to vote.

The following is a list of acceptable documents to establish your citizenship:

- A legible photocopy of a birth certificate that verifies citizenship and supporting legal documentation (i.e. marriage certificate) if the name on the birth certificate is not the same as your \_\_\_\_\_current legal name
- A legible photocopy of pertinent pages of a United States passport identifying the applicant
- Presentation to the County Recorder of United States naturalization documents or the number of the certificate of naturalization in box 629 on the front of this form
- The applicant's Bureau of Indian Affairs Card Number, Tribal Treaty Card Number, or Tribal Enrollment Number in box 46 on the front of this voter registration form
- A legible photocopy of a driver license or non-operating license identification from another state within the United States if the license indicates that the applicant has provided satisfactory proof of \_\_\_\_\_citizenship
- A legible photocopy of a Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth.

If you need to include a photocopy of proof of citizenship, please fold the proof along with the Voter Registration Application and place both items in an envelope and mail to the address provided below.

**7. Choice of Party.** If you are registered in a political party which has qualified for ballot recognition, you will be permitted to vote the primary election ballot for that party. If you are registered as an independent, no party preference or as a member of a party which is not qualified for ballot recognition, you may select and vote one primary election ballot for one of the recognized political parties.

**8. Race or Ethnic Group.** Leave blank.

**9. Signature.** To register in Arizona you must:

- Must be a Citizen of the United States of America
- Must be a resident of Arizona and the county listed on your registration
- Must be 18 years of age or more on or before the day of the next regular General Election
- Must not be a convicted felony, unless your civil rights have been restored
- Must not have been adjudicated incompetent



**Attention: Proof of Voter Identification**

(Pursuant to the Help America Vote Act of 2002)

If this form is submitted by mail and it is the first time you have registered to vote in your jurisdiction, you **MUST** submit current, valid proof of identification with this application or the first time you vote in a federal election. To send it with this application you should enclose one of the following:

- (1) ~~A COPY of a current and valid photo identification OR~~
- (2) ~~A COPY of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address in the jurisdiction.~~

Submitting your proof of identification now with the application will allow you to avoid the federal requirement to show this proof at the polling place or, if voting by mail, to avoid sending it with your mail-in ballot. If you do not provide proof of identification, you may cast a provisional ballot.

Voters may also be required to show proof of identification under State law.

**Mailing address:**  
Secretary of State/Elections  
1700 W. Washington Street, 7th Floor  
Phoenix, AZ 85007-2888

Website: [www.azsos.gov](http://www.azsos.gov)



U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of )  
 )  
Arizona Request for Accommodation )  
 )

CERTIFICATION

I, Paul S. DeGregorio, Chairman of the U.S. Election Assistance Commission, do hereby certify that on July 11, 2006, the Commissioners voted on the above referenced matter. This matter proposed that the Commission accommodate Arizona's proof of citizenship procedure by amending the state specific portion of the Federal Voter Registration Form. The matter also proposed a letter to communicate this decision to the state. All ballots were timely submitted.

After review of the ballots, I certify that the measure fails, having not achieved the requisite 3 votes required by law. Commissioners Davidson and DeGregorio voted affirmatively, and Commissioners Martinez and Hillman objected.

Attest:

July 31, 2006  
Date

Paul DeGregorio  
Paul S. DeGregorio  
Chairman



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

**DATE & TIME OF TRANSMITTAL:** July 6, 2006, 5:00 p.m.

**BALLOT DEADLINE:** July 10, 2006, 7:00 p.m. (time extention)

**COMMISSIONERS:** DAVIDSON, DEGREGORIO, HILLMAN, MARTINEZ

**SUBJECT:** ARIZONA'S REQUEST FOR ACCOMMODATION

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: July 10, 2006 SIGNATURE: Paul DeGregorio  
Signed by Amie Shueck

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

**TALLY VOTE MATTER**

DATE & TIME OF TRANSMITTAL: July 6, 2006, 5:00 p.m.

BALLOT DEADLINE: July 11, 2006, 7:00 p.m. (date and time extension)

COMMISSIONERS: DAVIDSON, DeGREGORIO, HILLMAN, MARTINEZ

SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

- ( ) I approve the recommendation.
- I disapprove the recommendation.
- ( ) I object to the recommendation.
- ( ) I am recused from voting.

COMMENTS: Please see Position Statement

\_\_\_\_\_

DATE: 7/11/06 SIGNATURE: Ray Martinez III

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: July 6, 2006, 5:00 p.m.

BALLOT DEADLINE: July 10, 2006, 5:00 p.m.

COMMISSIONERS: DAVIDSON, DeGREGORIO, HILLMAN, MARTINEZ

SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

- I approve the recommendation.
- I disapprove the recommendation..
- I object to the recommendation.
- I am recused from voting.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: 7/7/06 SIGNATURE: *E. Callver*  
*E. Callver for Commissioner Davidson*

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM PAUL DEGREGORIO, CHAIRMAN



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: July 6, 2006, 5:00 p.m.

BALLOT DEADLINE: July 11, 2006, 7:00 p.m. (date and time extension)

COMMISSIONERS: DAVIDSON, DEGREGORIO, HILLMAN, MARTINEZ

SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

- I approve the recommendation.
- I disapprove the recommendation.
- I object to the recommendation.
- I am recused from voting.

COMMENTS: The attached memo is an integral part of my response to this Tally Vote.

DATE: 11 July 2006 SIGNATURE: [Handwritten Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR



**U.S. ELECTION ASSISTANCE COMMISSION**  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

July 6, 2006

**MEMORANDUM**

**TO:** EAC Commissioners

**FROM:** Paul S. DeGregorio, Chairman  
U.S. Election Assistance Commission

**SUBJECT:** Arizona's Request for Accommodation

*PH (DeAnna Smith signing for Chairman DeGregorio)*

On June 20, 2006, the Arizona Secretary of State, Jan Brewer, forwarded a letter to my office (attached) requesting that the EAC change Arizona's state specific instructions on the Federal Voter Registration Form to incorporate the state's additional proof of citizenship procedures. This letter was sent following a U.S. District Court's decision denying a request for a Temporary Restraining Order filed to prevent enforcement of the proof of citizenship requirement (Proposition 200).

As you know, the EAC has previously refused Arizona's request to amend the Federal Form's state specific instructions. However, at present, that prior determination, the preliminary determination of the Court, and Arizona's position regarding the Federal Form have created significant confusion for the Arizona voters. Given this fact and our shared desire not to allow this confusion to disenfranchise Arizona voters, I recommend that we amend the Federal Form's state specific instructions to accommodate Arizona's proof citizenship procedure. To this end, I have attached a letter for your consideration. This letter communicates (1) the EAC decision to change to the Federal Form, and (2) its position regarding Federal authority over the Federal Registration Form.

**RECOMMENDATIONS:**

- (1) Approve, via tally vote, the accommodation of Arizona's proof of citizenship procedure by amending the state specific portion of the Federal Voter Registration Form; and
- (2) Review and approve, via tally vote, the attached letter to communicate the decision.



The Honorable Jan Brewer  
Arizona Secretary of State  
1700 West Washington Street, 7th Floor  
Phoenix, AZ 85007-2888

Secretary Brewer,

This letter responds to your correspondence of June 20, 2006, in which you requested that the U.S. Election Assistance Commission ("EAC") change Arizona's state specific instructions on the Federal Voter Registration Form to incorporate the state's additional proof of citizenship procedures. You have made this request in light of a recent U.S. District Court decision on a Temporary Restraining Order (Gonzalez v. State of Arizona, No. CV 06-1268-PHX-ROS). Ultimately, this preliminary decision has raised considerable confusion regarding Arizona's registration process. As such, the EAC is persuaded by your request to stem this confusion and prevent the potential disenfranchisement of Arizona voters. To this end, the EAC will amend the Federal Form to accommodate Arizona's proof of citizenship procedure.

The EAC reviewed the Court's opinion referenced in your letter. Unfortunately, its application to the Federal regulation of voter registration under the National Voter Registration Act is unclear. The judge's opinion ultimately concluded only that Proposition 200 does not "conflict with a plain language reading of the NVRA." A conclusion which the EAC does not and has not challenged.<sup>1</sup> While the court clearly stated that the NVRA sets the "floor" regarding voter registration in Federal elections, it failed to discuss the impact of Federal regulatory action. The NVRA allows for the use of two forms to be used in voter registration, a state form and a Federal form. While the state may determine the requirements of its voter registration form (consistent with the minimum requirements of the NVRA), the EAC determines the requirements of the Federal Form. This form must be accepted and used by states. Ultimately, the Court's opinion did not address the significance of specific action taken by a Federal Regulatory Agency in the creation of the Federal Form. To address this confusion, the EAC has decided to make its issuance of Federal regulations regarding the NVRA's Federal Form a priority. The EAC is required to prescribe such regulation pursuant to the NVRA (42 U.S.C. 1973gg-7).

EAC staff will contact your office promptly to coordinate the changes to Arizona's state specific instructions on the Federal Form. Your cooperation in this matter is appreciated. If you have any questions or concerns regarding the above, please contact the undersigned.

Sincerely,

Paul S. DeGregorio  
Chair

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<sup>1</sup> In fact, in the original March 6, 2006 letter to your office, the EAC clearly stated that Arizona may apply Proposition 200 citizenship requirements to its state form as long as it did so in a manner that met the minimum requirements of the NVRA.



OFFICE OF THE VICE CHAIR

U.S. ELECTION ASSISTANCE COMMISSION  
1225 NEW YORK AVENUE, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

**POSITION STATEMENT  
COMMISSIONER RAY MARTINEZ III  
JULY 10, 2006**

**ON THE MATTER REGARDING EAC TALLY VOTE DATED JULY 6, 2006:  
“ARIZONA’S REQUEST FOR ACCOMMODATION”**

On Thursday, July 6, 2006, EAC Chairman Paul DeGregorio proposed, via a Tally Vote, that the EAC “...amend the Federal Form’s state specific instructions to accommodate Arizona’s proof of citizenship procedure.” In a letter from EAC Executive Director Tom Wilkey to the State of Arizona, dated March 6, 2006, the EAC had previously refused Arizona’s request to amend its state specific instructions affixed to the Federal Form and condition the use and acceptance of the Federal Form upon an applicant providing proof of citizenship.<sup>1</sup> Because of the significance of this proposed Tally Vote, I write today to briefly explain my rationale for disapproval.

**INAPPROPRIATE USE OF TALLY VOTE PROCEDURE**

Throughout its 32-month history, the EAC has utilized Tally Votes for routine matters, most typically, for disbursement of Requirements Payments to States under Title II of HAVA.<sup>2</sup> Never has the EAC utilized a Tally Vote procedure to overrule a decision of our executive director. To date, the EAC has recorded *public* votes on matters such as election of officers, adoption of the first set of voluntary guidance regarding statewide voter registration systems, and adoption of the Voluntary Voting System Guidelines of 2005. Moreover, on the one previous occasion when the EAC did consider a significant

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<sup>1</sup> See, *Letter from Thomas Wilkey to Arizona Secretary of State*, dated March 6, 2006.

<sup>2</sup> See generally, *EAC Annual Report to Congress for FY 2004*, Election Assistance Commission (2005); *EAC Annual Report to Congress for FY 2005*, Election Assistance Commission (2006).

matter related to the National Voter Registration Act of 1993,<sup>3</sup> the EAC took a public (and unanimous) vote to decide the issue. In my view, this decision is too significant to be taken without the benefit of a properly noticed and convened public meeting or hearing. This is particularly true in light of the fact that if the EAC were to approve this Tally Vote, we would be drastically altering our agency's interpretation of NVRA on a matter of fundamental importance to the American public.

Importantly, while each commissioner possesses the authority under rules adopted by the EAC to procedurally object to any Tally Vote, delay its final implementation and require it to be debated at a future EAC public meeting,<sup>4</sup> I will not exercise such authority today. In short, I stand by the EAC's previously articulated legal rationale on this matter and I believe no further EAC action is currently warranted, especially in light of the fact that the EAC is not a party to any litigation on this matter nor has the EAC been ordered to take specific action by any court.

My further rationale for disapproval of this proposed Tally Vote is stated below:

1. **Confusion for Arizona Voters.** Chairman DeGregorio contends that the EAC 's prior determination of this matter,<sup>5</sup> together with the "preliminary" decision by U.S. District Court Judge Roslyn Silver as well as Arizona's current position regarding the Federal Form "...have created significant confusion for the Arizona voters." As a result, Chairman DeGregorio proposes that we "...not allow this confusion to disenfranchise Arizona voters [and that] we amend the Federal Form's state specific instructions to accommodate Arizona's proof of citizenship procedure."

However, nothing has changed with regard to how Arizona treats the Federal Form, even after the opinion issued last month by Judge Silver. That is, Arizona Secretary of State Jan Brewer, pursuant to Proposition 200, has previously

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<sup>3</sup> See, *Statement of Policy Regarding National Mail Voter Registration Form*, Election Assistance Commission, August 10, 2004, at [http://www.eac.gov/statements\\_resolutions.htm](http://www.eac.gov/statements_resolutions.htm).

<sup>4</sup> See, EAC Tally Vote "Procedures for Voting by Circulation," certified by a vote of 4-0 on May 4, 2004.

<sup>5</sup> *Letter from Thomas Wilkey to Arizona Secretary of State*, dated March 6, 2006.

instructed Arizona county recorders to treat the Federal Form as incomplete if an applicant submits the form without appropriate proof of citizenship.<sup>6</sup> Judge Silver's opinion does not bar the State of Arizona from requiring proof of citizenship upon receipt of the Federal Form. Accordingly, any voter registration applicant utilizing the Federal Form in Arizona is today treated in the *exact same manner* as before Judge Silver's opinion. Furthermore, since continued litigation and/or appeals on this matter are likely – including a hearing currently pending before Judge Silver later this month to decide the merits of a preliminary injunction sought by the plaintiffs in *Gonzalez v. State of Arizona*, (No. CV 06-1268-PHX-ROS) – it is evident that any action today by the EAC may be premature.

Furthermore, reversing our current agency position at this time may cause uncertainty in other NVRA-jurisdictions throughout the country who are undoubtedly closely monitoring legal and policy developments on this issue. Already, at least one state is considering legislation in the wake of Arizona's decision to require proof of citizenship upon voter registration.<sup>7</sup> Other states are likely to follow. For the EAC to reverse its position at a time when the courts have only just begun to contemplate this important issue is untimely at best. What about the confusion that will be caused if today we grant Arizona its request for an accommodation and other States are left wondering whether they too, should (or can) be requiring proof of citizenship with the Federal Form? Will each State need to specifically come before the EAC to request an accommodation? Will each State need to pass a law or promulgate an administrative rule requiring proof of citizenship with the Federal Form before requesting an accommodation from the EAC? Or, will this specific decision for Arizona be deemed by the EAC as applicable across the board for all NVRA-covered jurisdictions? These are but a few of the many questions which will inevitably arise if we were to approve this Tally Vote – questions, by the way,

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<sup>6</sup> See, *Letter from Secretary Jan Brewer to Chairman DeGregorio*, dated March 13, 2006.

<sup>7</sup> April Washington "Election Officials Split on Voting Bill," Rocky Mountain News, July 4, 2006 (referencing Colorado election officials responding to the proposed 'proof of citizenship' bill).

which this Tally Vote does not address. State and local jurisdictions are best served by an EAC that exercises its limited authority under both NVRA and HAVA in a measured, deliberate and *consistent* manner.

Given that the EAC is not a party to the specific litigation referenced by Chairman DeGregorio; that the EAC has not been ordered by Judge Silver or any other court to take any specific action on this matter; that a voter registration applicant in Arizona is treated exactly the same today as before last month's opinion by Judge Silver; that other States will be influenced by actions taken on this matter both by the courts and the EAC; and, that continued litigation and appeals are likely on this matter, it is clear that the EAC should today refrain from any further action that may ultimately cause even greater uncertainty not just for voters in Arizona, but for the entire country.

2. **EAC Precedent Already Established.** Last year, the EAC was presented with an analogous situation as that which confronts us today regarding the citizenship requirement in Arizona. That is, after passage of a new Florida law mandating that a voter registration applicant check a box attesting to the applicant's mental capacity, the State of Florida requested that the EAC amend its state-specific instructions affixed to the Federal Form to condition the use and acceptance of the Federal Form in a similar manner as is now done on the state-issued Florida voter registration form.

In rejecting Florida's request to allow conditional use and acceptance of the Federal Form, the EAC general counsel's office, with the unanimous consent of the EAC commissioners, wrote the following:

“...Florida's proposed policy, to treat all Federal Mail Registration Forms as incomplete, violates the provisions of the NVRA. The NVRA requires States to both “accept” and “use” the Federal Form. Under Florida's policy, State officials would take in the Federal Form, only to turn around and require its user to re-file or otherwise supplement their

federal application using a state form. Under this scheme, the Federal Mail Registration Form would be neither “accepted” nor “used” by the State. That language of NVRA mandates that the Federal Form, without supplementation, be accepted and used by states to add an individual to its registration rolls. Any Federal Mail Registration Form that has been properly and completely filled-out by an applicant and timely received by an election official must be accepted in full satisfaction of registration requirements. *Such acceptance and use of the Federal Form is subject only to HAVA’s verification mandate.* 42 U.S.C. 15483.”<sup>8</sup> (Emphasis added.)

Clearly, in refusing Florida’s request last year, the EAC not only established its own interpretive precedent regarding the use and acceptance of the Federal Form, but it also upheld established precedent from our predecessor agency, the Federal Election Commission. It is difficult for me to understand how today, we could reverse our agency’s position on this matter as it relates specifically to Arizona, and yet, somehow distinguish why Florida should not also be allowed to similarly condition the Federal Form. And, if this were to result, we would find ourselves headed down that perilous “slippery slope” where registration requirements would be markedly different from state to state for any applicant using the Federal Form – one of the principle reasons why Congress passed NVRA and created the Federal Form in the first place.

3. **Break from Consensus Decision-Making by the EAC.** This proposed Tally Vote will mark the first time that a decision by the EAC commissioners will be decided by a less than unanimous basis.<sup>9</sup> As such, regardless of the ultimate outcome, I am deeply troubled that a Tally Vote on this matter could produce a fundamental turning point in how present and future EAC commissioners approach contentious election administration issues. This, in my view, would be an unfortunate development for this agency. While public opinion among EAC

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<sup>8</sup> See, Letter from Gavin Gilmour, Associate General Counsel, to Dawn Roberts, Director of the Division of Elections, July 26, 2005.

<sup>9</sup> At least one hundred Tally Votes have been recorded by the EAC, with all Commissioners voting in the affirmative for each of the prior Tally Votes.

stakeholders is still mixed as to the benefits and drawbacks of a federal agency such as the EAC, there has been praise from nearly all fronts for the way the EAC has previously navigated difficult, politically-tinged issues while still maintaining unanimity on such matters.

For example, in the months leading up to the November 2004 presidential election, the issue regarding “casting” and “counting” of provisional ballots received much media scrutiny, as well as significant litigation in both state and federal courts throughout the country. Rather than wade directly into the issue by utilizing our voluntary guidance authority under Sections 311 and 312 of HAVA<sup>10</sup> and, despite significant pressure to do so from various partisan interests, the EAC was able to deftly navigate this contentious issue. Ultimately, the EAC unanimously passed a timely resolution regarding provisional voting<sup>11</sup> and prudently allowed the courts to decide this controversial and politically-charged matter.

Likewise, the EAC faced similar issues on at least two occasions last year. In March of 2005, the EAC was apprised of a decision by the State of Arizona to condition the casting of provisional ballots in federal elections to the showing of proper voter identification as required by Proposition 200. In response, the EAC commissioners unanimously agreed to initiate collaborative discussions with the Department of Justice (DOJ) to interject our agency’s view that such conditioning of provisional ballots was inconsistent with HAVA. Ultimately, DOJ clarified its previously-issued pre-clearance letter to Arizona and Arizona in turn, eliminated the conflict between Proposition 200 and HAVA’s provisional voting requirements.

Similarly, as has already been explained, the EAC was asked last year by the State of Florida to amend its state-specific instructions affixed to the Federal Form in order to condition the use and acceptance of the Federal Form upon the applicant

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<sup>10</sup> See 42 U.S.C. § 15501; 42 U.S.C. § 15502.

<sup>11</sup> See, EAC Resolution 2004-002: “Provisional Voting,” October 12, 2004, at <http://www.eac.gov/docs/Resolution%20-%20Provisional%20Voting.pdf>.



furnishing additional information regarding mental capacity. After careful analysis, the EAC's general counsel, with the unanimous support of EAC commissioners, issued a determination to Florida which upheld the 13-year precedent of the NVRA – that the Federal Form, as promulgated by the EAC, must be unconditionally used and accepted by all NVRA-jurisdictions.

What is significant about the examples cited above – which involve issues that touch upon both the voluntary guidance and limited regulatory authority possessed by the EAC – is that when faced with these politically difficult decisions, the EAC commissioners have heretofore chosen a consensus-driven path that *does not* seek to alter the carefully crafted balance of federal/state roles regarding election administration. Such a measured and deliberate approach is most appropriate at this particular time for the EAC, especially as we approach a contentious 2006 general election in which state and local election administrators will need the support, resources and *credibility* of a fully functioning EAC. My strong concern is that this particular Tally Vote may lead the EAC down a path that many EAC stakeholders have explicitly said they do not want: an overly partisan federal agency that is more prone to deadlock than to fulfilling its ultimate and, in my view, most important promise of serving as a national clearinghouse and creating the “gold standard” in national voting system standards and certification.

## CONCLUSION

Lastly, I would like to reiterate my ongoing commitment to the essential role played by state and local governments in administering the process of election administration. As an EAC commissioner, I have made it my priority to build a genuine and lasting partnership with election officials at all levels of government – irrespective of political party affiliation – and I have actively sought their input to guide my work on the EAC. I will continue to honor and support the strong tradition of state and local control over the process of election administration. I would also like to specifically mention the high personal regard I have for Arizona Secretary of State Jan Brewer. She and I have had a chance to extensively discuss this matter and, despite our obvious policy disagreement, I

believe she is committed to serving the people of Arizona with integrity and fairness – as she has throughout her extensive and notable career in public service.

Perhaps it is inevitable that someday, Congress will decide to vest greater authority upon the EAC, particularly as politically-charged issues become more frequent. While I reserve judgment today on whether or not such a development merits consideration, the EAC that currently exists – as envisioned by nearly all who participated in the development of HAVA – was one relegated largely to voluntary guidance and an advisory role on matters of election administration. As such, when any matter comes before this agency which would significantly alter the carefully crafted balance of federal/state authority that is implicit in laws such as NVRA and HAVA, I believe the EAC has an obligation to exercise its voluntary guidance *and regulatory authority* in the most limited, deliberative and transparent manner possible.

For the reasons put forth in Mr. Wilkey’s letter to Arizona dated March 6, 2006, and, after careful and due consideration of Judge Silver’s opinion, I continue to believe that our current agency position accurately reflects the plain language of NVRA, as well as Congressional intent in passing this historic law.

While I respect Chairman DeGregorio’s right to bring this matter before the EAC, for the reasons stated above, I respectfully disapprove of this proposed Tally Vote.

Respectfully Submitted,

A handwritten signature in black ink that reads "Ray Martinez III". The signature is written in a cursive style with a stylized "M" at the end.

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**COMMISSIONER RAY MARTINEZ III**

**July 10, 2006**

*Statement of EAC Chairman Paul DeGregorio regarding the EAC's Tally Vote of July 6, 2006, involving the request from the Arizona Secretary of State to change the instructions on the Arizona Federal Voter Registration Form.*

The U.S. Election Assistance Commission is mandated by the National Voter Registration Act (NVRA) to create and regulate the National Voter Registration Form. As part of that responsibility, EAC staff routinely fields requests from states to update or change their state-specific instructions, which are part of the National Form. These instructions cover a wide variety of issues from contact information to registration deadlines.

In late 2005 EAC staff contacted the state of Arizona to ascertain the effect of Proposition 200, a new law that was passed by 62 percent of Arizona voters in November 2004 that required, among other things, documentary proof of citizenship for those wishing to register to vote in Arizona elections.

EAC staff reviewed the Form and the information provided by the state of Arizona. In March 2006 the EAC Executive Director informed the Arizona Secretary of State that based on a review of NVRA that took into account the legislative history of its 1993 enactment, the EAC would not change the instructions on the Form to reflect Proposition 200's requirement for proof of citizenship.

Ultimately, Arizona did not accept the EAC's determination regarding the National Voter Form. Because of this, a civil lawsuit, *Gonzalez et al. v. State of Arizona* (No. CV 06-1268-PHX-ROX), was filed in federal district court in Arizona by private parties challenging Arizona's refusal to accept the National Form and the proof of citizenship requirement of Proposition 200. The Plaintiffs asked the court for a temporary restraining order against Proposition 200.

On June 19, 2006, United States District Judge Roslyn O. Silver issued a rather lengthy 15-page opinion that not only denied Plaintiffs request, but included a reasoned legal analysis on why Plaintiffs would not succeed on the merits on the case. In her ruling, Judge Silver, a Clinton appointee, indicated that the plain language of NVRA was clear and therefore the notion of legislative intent did not need to be considered. The Judge indicated that requiring documentary proof of citizenship in the registration process did not violate the NVRA or federal law.

Shortly after the court's ruling in the case, Arizona Secretary of State Jan Brewer wrote the EAC to reiterate the court decision and formally request a change in the form to reflect the decision and Arizona's requirements for documentary proof of citizenship. Secretary Brewer made a compelling case that not changing the Federal Form would cause great confusion and require voters who were not instructed to provide proof of citizenship to take an additional step to have their voter registrations completed. I also read the court ruling very carefully and came to the conclusion that the Judge's ruling was sound and not likely to be overturned. Also, based on my own experience as an election official, I knew that Secretary Brewer's position made great sense. I recall that

during my 8 years as director of elections in St. Louis County, Missouri, many voter registration applications forms could not be finalized because voters had not responded to repeated written requests to supply information that was missing. Thus, leaving out key instructions on the National Voter Registration Form was likely to cause more steps for the voters and possibly keep them from being able to cast a ballot.

I was also very concerned that with the August 14, 2006, voter registration deadline for the Arizona primary election fast approaching, that time was of the essence on this issue. Thus, using my prerogative as a Commissioner, on July 6, I submitted a Tally Vote to change the instructions on the form so that no more Arizona voters would be disenfranchised by the confusion. The Tally Vote subsequently failed on a 2-2 vote, with Commissioner Donetta Davidson supporting my position for an immediate change in the instructions.

Further clarification of the federal government's role in developing the National Registration Form is needed to prevent future confusion. The NVRA allows for the use of two forms to be used in voter registration, a state form and the National Form. While the state may determine the evidentiary requirements of its voter registration form (consistent with the minimum requirements of the NVRA), the EAC determines the procedural and evidentiary requirements of the National Form. Per the NVRA, the National Form must be accepted and used by states. Ultimately, the court's opinion did not address the significance of specific action taken by the EAC as a federal regulatory agency in the creation of the National Form. To address this confusion, I will make every effort to set, as an EAC priority, the issuance of federal regulations regarding the National Form. The EAC is required to prescribe such regulation pursuant to the NVRA (42 U.S.C. 1973gg-7).

As one who has his roots in local government, more often than not I look at issues that come before me with that perspective. I also recognize the important role of the states and especially their right to govern their own elections and to implement election laws that they believe are appropriate for the voters of their state, including statutes that protect the integrity of the process. It is that diversity and competition of ideas, just like the diversity and ideas of the American people, that have made America's democracy strong. At the same time, I am strong believer in the Help America Vote Act and the new federal role in improving the methods of conducting elections in the United States. They have also made America's democracy stronger. I would not have accepted the recommendation from the Congress and the appointment from President George W. Bush to the EAC if I did not believe so. Therefore, each decision I make on this commission is carefully weighed against that philosophy. In this instance, I felt that the voters of Arizona have demonstrated their desire to require proof of citizenship for those registering to vote. The Secretary of State had made a compelling case to support their views. And, a federal court has supported Arizona's analysis of this issue. Thus, I believe the EAC should end the confusion for the voters of Arizona and change the instructions on the Federal Form.

A copy of the Tally Vote, the opinion of the court, and the letters referenced in this statement are also included [on this webpage](#).



**KEN BENNETT**  
SECRETARY OF STATE  
STATE OF ARIZONA



June 19, 2013

The U.S. Election Assistance Commission  
Ms. Alice P. Miller  
1201 New York Avenue, N.W., Suite 300  
Washington, DC 20005

Re: State-specific identification requirements for Arizona.

Dear Acting Director Miller:

In the case of *Arizona v. Inter Tribal Council of Arizona, Inc.*, the United States Supreme Court held that "Arizona may ... request anew that the EAC include such a requirement [i.e., the state requirement that applicants submit some evidence of citizenship] among the federal form's state-specific instructions, and may seek judicial review of the EAC's decision under the Administrative Procedures Act." Opinion at 18. The Court also stated:

Since the power to establish voting requirements is of little value without the power to enforce those requirements, Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualification.

Opinion at 15.

In light of the Supreme Court's opinion, Arizona is renewing its request that you include Arizona-specific instructions in the federal form that instruct Arizona voters about Arizona's requirement in A.R.S. § 16-166(F) as follows:

If this is your first time registering to vote in Arizona or you have moved to another county in Arizona, your voter registration form must also include proof of citizenship or the form will be rejected. If you have an Arizona driver license or non-operating identification issued after October 1, 1996, write the number in box 6 on the front of the federal form. This will serve as proof of citizenship and no additional documents are needed. If not, you must attach proof of citizenship to the form. Only one acceptable form of proof is needed to register to vote.

1700 W. Washington Street, 7th Floor  
Phoenix, Arizona 85007-2808  
Telephone (602) 542-4285 Fax (602) 542-1575  
[www.azsos.gov](http://www.azsos.gov)

- A legible photocopy of a birth certificate that verifies citizenship and supporting legal documentation (i.e. marriage certificate) if the name on the birth certificate is not the same as your current legal name
- A legible photocopy of the pertinent pages of your passport
- Presentation to the County Recorder of U.S. naturalization documents or fill in your Alien Registration Number in box 6
- Your Indian Census Number, Bureau of Indian Affairs Card Number, Tribal Treaty Card Number, or Tribal Enrollment Number in box 6
- A legible photocopy of your Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth.

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink that reads "Ken Bennett". The signature is written in a cursive style with a large, stylized "K" and "B".

Ken Bennett  
Arizona Secretary of State



1401 New York Avenue, NW Tel: 202.662.8600  
Suite 400 Fax: 202.783.0857  
Washington, DC 20005-2124 www.lawyerscommittee.org

By E-Mail

Alice P. Miller  
Acting Executive Director and Chief Operating Officer  
United States Election Assistance Commission  
1201 New York Avenue, NW  
Suite 300  
Washington, DC 20005

Dear Ms. Miller:

I am writing as one of the attorneys for the Respondents in *Arizona v. Inter Tribal Council of Arizona, Inc.*

As you are aware, on June 17, 2013, the United States Supreme Court issued its decision in that case. The Court held that, with respect to use of the National Mail Registration Form ("Federal Form") created by Section 6 of the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg-4, States are "preclude[d] from requiring a Federal Form applicant to submit information beyond that required by the form itself." Slip op. at 17-18.

As you also are aware, on June 19, 2013 the State of Arizona wrote to the EAC asking the agency to conform the state-specific Federal Form instructions for Arizona with the evidence-of-citizenship requirement enacted by Arizona's Proposition 200, codified at Ariz. Rev. Stat. § 16-166(F). On June 18, 2013, the State of Kansas also wrote to the EAC making the same request with respect to that State's evidence-of-citizenship requirement for voter registration.

Our clients, who include the Inter Tribal Council of Arizona and its 21 Indian Tribes, the Hopi Tribe, and several civic organizations in the State that are active in voter registration, have a direct and ongoing interest in your agency's disposition of Arizona's request. The EAC Executive Director correctly denied Arizona's previous request for such a modification on March 6, 2006, and no change in the facts or the governing law since that date would support your agency granting Arizona's current request. Arizona has not shown, and will not be able to show, that the NVRA requires your agency to grant its request, and it is not otherwise necessary for your agency to modify the Federal Form in the manner Arizona has requested.

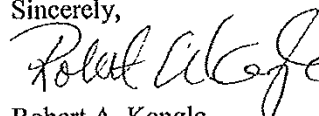
We ask that you provide our clients, as well as other interested citizens and organizations, with the EAC's anticipated schedule and procedures for responding to these pending requests. It is particularly important that the public be advised of any comment period, or other opportunity for public participation, in advance of the agency's determination.





Please contact the undersigned if you have any questions or require additional information. We thank you in advance for your prompt response to this letter.

Sincerely,



Robert A. Kengle  
Co-Director, Voting Rights Project

cc: Nina Perales, Esq.  
Thomas Collins, Arizona Attorney General's Office



TOM HORNE  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

July 26, 2013

Ms. Alice P. Miller  
Acting Executive Director and Chief Operating Officer  
United States Election Assistance Commission  
1201 New York Avenue, NW  
Suite 300  
Washington, DC 20005

**RE: Arizona v Inter Tribal Council of Arizona, Inc.**

Dear Ms. Miller:

This letter is a follow up to the Arizona Secretary of State's letter dated June 19, 2013, requesting a state specific instruction for evidence of citizenship. This letter is also partially in response to the letter sent to you by Robert A. Kendall, one of the attorneys for the Inter Tribal Council.

Given your recent approval of Louisiana's state-specific instructions, we trust you will approve Arizona's comparable state-specific instructions. Toward that end and consistent with that outcome, I want to emphasize a controlling legal principle embodied in the *Inter Tribal Council* Majority Opinion. The principle derives from Article 1 § 2 of the United States Constitution, which provides that qualifications for voters in federal elections are to be the same as qualifications to vote for the most numerous house of the state legislature, and therefore are a matter of state, and not federal law. The principle, as articulated in the Majority Opinion, is this:

Since the power to establish voting requirements is of little value without the power to enforce those requirements, Arizona is correct that it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.

Slip op. at 15 (footnote omitted).

The Court goes on to state:

We think that-by analogy to the rule of statutory interpretation that avoids questionable constitutionality-validly conferred discretionary executive authority is properly exercised (as the Government has proposed) to avoid serious constitutional doubt. That is to say, it is surely permissible if not requisite for the Government to say that necessary information which may be required will be required.

Slip op. at 16; emphasis in original and emphasis added.

As these statements indicate, evidence of citizenship is necessary for Arizona to fulfill its function under Article 1 § 2 of the United States Constitution, to set the qualifications of voters and in this case, to assure that voters are in fact citizens. It is “requisite” for the EAC to permit that necessary step, in the form of a state specific request, so that Arizona can fulfill its obligations under Article 1 § 2 of the United States Constitution. In the words of the Court, “*it would raise serious constitutional doubts*” for a federal statute to preclude Arizona from fulfilling its constitutional requirements.

Justice Scalia, the author of the opinion, made it quite clear at oral argument that “evidence” of citizenship requires proof beyond a “statement under oath” declaring citizenship:

Justice Scalia: “But the form has to enable the State to do that. And it seems to me you were quite able to argue that in – in refusing to allow you to include in the – in the Federal form in Arizona some indication of proof of citizenship requiring nothing else except oh, I’m a – check off, I’m a citizen, right? So it’s under oath. Big deal. If – if – if you’re willing to violate the voting laws, I suppose you’re willing to violate the perjury laws...”

Justice Scalia: “Not anything else that they want. No anything else that they want. But what is, in the words of the statute, necessary to enable the appropriate State election official to assess the eligibility of the applicant? It’s clear that the statute intends the States to be able to do that. And you say, well, the –you know, the commission has—has required its—its own proof and the State wants a different kind of proof. The proof the Commission requires is simply the statement, I’m a citizen. This is proof? Ms. Millett: “This is – statements”. Justice Scalia: “This is not proof at all. Ms. Millett: “Statements under oath, statements under oath in a criminal case.” Justice Scalia: “Under oath is not proof at all. It’s just a statement.” (Transcript of oral argument, pp. 17, 44, emphasis added)

Arizona’s requirements are precisely the kind of evidence envisioned by the Supreme Court’s opinion and Justice Scalia’s comments at oral argument.

The Court concluded the opinion as follows:

Should the EAC's inaction persist, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include Arizona's concrete evidence requirement on the Federal Form. See 5 U.S.C. §706(1). Arizona might also assert (as it has argued here) that it would be arbitrary for the EAC to refuse to include Arizona's instruction when it has accepted a similar instruction requested by Louisiana.<sup>11</sup>

Slip op. at 17; emphasis added.

Footnote 11 provided:

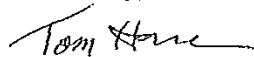
The EAC recently approved a state-specific instruction for Louisiana requiring applicants who lack a Louisiana driver's license, ID card, or Social Security number to attach additional documentation to the completed Federal Form." See National Mail Voter Registration Form, p. 9; Tr. of Oral Arg. 57 (United States).

In addition to the constitutional and legal points here, we appeal to your sense of fairness. To grant Louisiana what is denied to Arizona, would evidence inexplicable hostility to the citizens of Arizona, who passed Proposition 200 overwhelmingly. We know of no reason why Louisiana should be favored, or Arizona should be disfavored, in that manner.

Finally, we need to interpret what the Court meant by "should the EAC's inaction persist..." The letter to you requesting a state-specific instruction is dated June 19. We understand that you have advised the Arizona Secretary of State's Office that you will reach a decision within the next couple of weeks. Time is of the essence. We believe that 60 days is a reasonable period of time for you to act. If we do not receive a favorable ruling from you by 60 days from the date of the letter, a deadline of Monday August 19, we will treat that as inaction tantamount to a rejection, and we will pursue the legal remedies set forth in the above quoted United States Supreme Court decision.

Thank you very much.

Sincerely,



Tom Horne

Cc: Robert A. Kengle  
Nina Perales, Esq.

TCH/dcs



**U.S. Election Assistance Commission**  
**1201 New York Ave. NW – Suite 300**  
**Washington, DC 20005**

August 13, 2013

Honorable Ken Bennett  
Secretary of State  
Office of the Arizona Secretary of State  
1700W. Washington Street, 7<sup>th</sup> Floor  
Phoenix, AZ 85007-2808

Dear Secretary Bennett:

Thank you for your recent correspondence to this office requesting modification of instructions relative to Arizona on the national mail voter registration form (Federal Form). Please be advised that upon review the U.S. Election Assistance Commission (EAC) staff cannot process your request due to a lack of a quorum on the Commission.

As you know, EAC currently has four Commissioner vacancies. EAC staff is authorized to process State requests to modify state-specific instructions on the Federal Form but according to current procedures must defer any requests that raise “issues of broad policy concern to more than one state” until EAC has a quorum. I have attached a copy of the November 9, 2011 memo to former EAC Commissioners Donetta Davidson and Gineen Bresso from former Executive Director Thomas Wilkey delineating the process EAC staff must follow when processing State requests to modify their state-specific instructions on the Federal Form.

Your correspondence indicates that the result of the authorizing Arizona statute and corresponding modification to the state-specific instruction on the Federal Form would be that the Federal Form would be rejected without the proper citizenship documentation. The first sentence of the proposed instruction reads:

If this is your first time registering to vote in Arizona or you have moved to another county in Arizona, your voter registration form must also include proof of citizenship or the form will be rejected.

Failure to “accept and use” the Federal Form has broad policy impact that could affect more than one State.

In addition, citizenship documentation is not addressed in the National Voter Registration Act or the Help America Vote Act and the inclusion of such information with the Federal Form constitutes a policy question which EAC Commissioners must decide. EAC staff has no authority to establish policy for EAC.

The requested modification to the state-specific instruction on the Federal Form appears to raise issues of broad policy concern to more than one state. EAC staff is therefore constrained to defer the request until EAC has a quorum.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alice Miller".

Alice Miller,  
Acting Executive Director &  
Chief Operating Officer



**Office of the Executive Director  
U.S. Election Assistance Commission  
1201 New York Ave. NW – Suite 300  
Washington, DC 20005**

November 9, 2011

**MEMORANDUM**

**TO:** Commissioner Donetta Davidson  
Commissioner Gineen Bresso

A handwritten signature in black ink, appearing to read "TW", is positioned above the "FROM:" line.

**FROM:** Thomas Wilkey, Executive Director

**SUBJECT:** State Requests to Change their State-Specific Instructions on the National Mail Voter Registration Form

The National Voter Registration Act (NVRA), as amended by the Help America Vote Act (HAVA), transfers authority from the Federal Election Commission (FEC) to EAC to develop a Federal Mail Voter Registration Application Form (Federal Form) in consultation with the states and to prescribe regulations applicable to the Federal Form. The NVRA requires states to use and accept the Federal Form for federal elections. Section 9428.6(c) of the NVRA regulations (11CFR 9428.6(c)) specifically provides that “Each state election official shall notify the Commission, in writing, within thirty days of any change to the state’s voter eligibility requirements or other information reported under this section.”

Accordingly, EAC periodically receives requests from States to update their respective portion of the State-specific instructions contained on the Federal Form. Currently, EAC has no formally adopted written procedures or official policies in place regarding the processing of such requests. Since 2008, the Commission has voted on each submitted request. However, with the current lack of a quorum, no votes on these requests are possible. It is essential, however, that EAC continue to process these requests. I am, therefore, immediately implementing an interim procedure delegating to staff in the Division of Research, Policy and Programs (RPP) the ability to process State requests pending the establishment of a quorum. The interim procedure is as follows:

- All State requests must be from the Chief Election Officer of the State or his/her duly authorized agent on appropriate State letter-head.
- RPP staff is authorized to take action on two types of requests: 1) a State request to modify their mailing address and 2) a request for a change in the State-specific instructions if the proposed modification is required by a change in State law. This would include a request that clarifies existing state law.

- Upon review of the State request and after consultation with the Office of General Counsel, RPP staff shall make recommendations to the Executive Director.
- The Executive Director will make the final determination with regard to each State request.
- Requests that raise issues of broad policy concern to more than one State will be deferred until the re-establishment of a quorum.

This procedure is consistent with past precedent at the EAC. Prior to 2008, EAC staff approved requests from States to modify their State-specific instructions on the Federal Form.

Should you have any questions, please do not hesitate to contact me.

cc: Ms. Alice Miller,  
Chief Operating Officer

Karen Lynn-Dyson, Director  
Division of Research, Policy and Programs