IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KRIS W. KOBACH, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO.
vs.	)	5:13-CV-4095-EFM-DJW
	)	
UNITED STATES ELECTION ASSISTANCE COMMISSION, *et al.*,	)	
	)	
Defendants,	)	
	)	
and	)	
	)	
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, LEAGUE OF WOMEN VOTERS OF ARIZONA, and LEAGUE OF WOMEN VOTERS OF KANSAS,	)	
	)	
Defendant-Intervenors.	)	

DEFENDANT-INTERVENORS LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, LEAGUE OF WOMEN VOTERS OF ARIZONA, AND LEAGUE OF WOMEN VOTERS OF KANSAS' MEMORANDUM IN SUPPORT OF MOTION TO STAY PENDING APPEAL

I. INTRODUCTION

The Court's March 19, 2014 Order will significantly alter the status quo with respect to voter registration and voting in Kansas and Arizona. The League of Women Voters of the United States, the League of Women Voters of Kansas, and the League of Women Voters of Arizona (collectively, the "League") believe that, based on the Supreme Court's opinion in *Arizona v. Inter Tribal Council of Arizona, Inc*., 133 S. Ct. 2247 (2013) ("*ITCA*"), there is a substantial likelihood the Order will be overturned on appeal, as explained further below. At the

very least, there are "serious, substantial, difficult, and doubtful" questions on the merits—which is all the League is required to show to justify a stay of the Order when the balance of harms weighs in its favor, as it does here. *See F.T.C. v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852-53 (10th Cir. 2003).

The immediate impact of the Court's order will be that Kansas and Arizona citizens who attempt to register to vote using the federal voter registration form without documentary proof of citizenship will have their registrations rejected and will be unable to vote unless they subsequently supply such documentation. This impact will fall most heavily on members of communities that are already underrepresented at the polls—the very communities the League targets with its voter registration drives. Minorities, the elderly, and people with comparatively low incomes disproportionately lack documentary proof of citizenship. *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice, 2-3 (November 2006), http://www.brennancenter.org/analysis/citizens-without-proof. Women with changed names and individuals born outside of Kansas and Arizona would also face additional difficulties. Only 48% of voting-age women have ready access to birth certificates with their current legal name, and only 66% have access to *any* proof of citizenship with their current legal name. *Id*. In order to register to vote, they may be required to go through the additional step of swearing out an affidavit explaining the discrepancy. *See* Kan. Stat. Ann. 25-2309(q).

Another group that will suffer harsh consequences is naturalized citizens. At a recent naturalization ceremony in Johnson County, Kansas, the League attempted to assist newly naturalized citizens to register to vote using a special state iPad provided by the county board of elections to photograph the naturalization papers to meet the documentary proof of citizenship

requirement for state elections. Declaration of Dolores Furtado in Support of Motion to Stay ¶¶ 15-20 (attached hereto as Exhibit 1). Federal officials on site prevented the League from using the iPad to photograph naturalization papers—and also prevented a registrant from photographing his own certificate using his own device—stating that it is unlawful to photograph citizenship papers. (*Id.*) For many new citizens, naturalization certificates may be their only proof of citizenship. If those cannot be copied, new citizens will face an extra burden to appear in person at an election office in order to register to vote using the Federal Form. But the Federal Form was intended for use as *mail* registration, where applicants could simply complete and mail in the Federal Form without postage or an envelope. The additional requirement of providing documentary proof of citizenship negates the usefulness of voter registration application by mail, burdening citizens using the Federal Form and making it much more difficult for voter registration organizations to assist them.

In short, if the Court's order is overturned on appeal, thousands of voters will have been wrongfully prevented or otherwise deterred from voting—the very essence of irreparable harm.

The second major impact of the Court's order will be to hinder the voter registration drives of the League and other community groups. For decades, the League has helped Kansas and Arizona citizens to register to vote by assisting them in completing voter registration forms and submitting those forms to state officials. In the wake of the Court's order, all the League will typically be able to do is hand out forms and hope that people will be able to locate their citizenship documents at home, make photocopies, and mail them in with completed voter registration forms, despite the fact that the Federal Form was designed as a postcard.

Congress' express intent in enacting the NVRA was to simplify the voter registration process and "increase the number of eligible citizens who register to vote." 42 U.S.C. § 1973gg.

Since the Court's Order would have a detrimental effect on that goal as well as on the subsidiary goal of promoting voter registration drives of the sort the League typically conducts, the League respectfully requests that the Court stay the Order pending appeal, or in the alternative, enter a temporary stay so that the League may apply to the Tenth Circuit for a stay pending appeal.

II. ARGUMENT

A. Legal Standard

When deciding a motion for a stay pending appeal, a district court generally considers four factors: (1) whether the stay applicant has demonstrated a strong likelihood of success on the merits; (2) whether the applicant will suffer irreparable harm absent a stay; (3) whether a stay will substantially injure other parties to the proceeding; and (4) whether the public interest favors a stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *accord Nken v. Holder*, 556 U.S. 418, 426 (2009). In the Tenth Circuit, the factor concerning likelihood of success on the merits is "somewhat relaxed" where the three factors relating to harm (factors two through four) "tip decidedly in [the moving party's] favor." *F.T.C. v. Mainstream Mktg. Servs., Inc.*, 345 F.3d 850, 852-53 (10th Cir. 2003). In that situation, the requisite probability of success on the merits is demonstrated "when the petitioner seeking the stay has raised questions going to the merits so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation." *Id.* (internal quotation marks omitted).

B. The League is Likely To Succeed On Appeal

In its March 19, 2014 Order, this Court concluded that Congress has not spoken to the issue of whether states may require documentary proof of citizenship and that the EAC has a nondiscretionary ministerial duty to alter the Federal Form. The League believes that these conclusions are at odds with the Supreme Court's decision in *ITCA*, and thus that Defendant-Intervenors are likely to succeed on appeal.

In *ITCA*, the Supreme Court found that Congress intended to preempt state voter registration requirements in the Federal Form, creating a framework in which the Federal Form would serve as a "backstop" to the potentially onerous requirements states imposed on their own voter registration forms. After listing the criteria for the Federal Form, including that the form "may require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant," 42 U.S.C. 1973gg-7(b)(1), Congress delegated to the EAC the authority to determine the form's contents based on those criteria. While the Supreme Court did not explicitly decide whether the NVRA precludes documentary proof of citizenship, it did not need to—the EAC had already decided that issue, and the Court determined that the EAC possessed the authority to so decide. *ITCA*, 133 S. Ct. at 2259. Indeed, the Supreme Court explicitly acknowledged the EAC's discretionary authority, *see id.*, and further underscored that authority by directing Arizona to renew its request before the EAC, *see id.* at 2260, an instruction that would be have been futile had the EAC actually been powerless to deny the State's request.

The Supreme Court repeatedly emphasized in *ITCA* that the Federal Form is not supposed to mirror the states' voter registration requirements but is meant to reflect federal requirements, as decided by Congress and delegated to the EAC. As the Supreme Court recognized, if the Federal Form were subject to the same requirements as a state's own voter registration form, it would "cease[] to perform any meaningful function, and would be a feeble means of 'increasing the number of eligible citizens who register to vote in elections for Federal office.' 42 U.S.C. § 1973gg(b)." *ITCA*, 133 S. Ct. at 2256. The Supreme Court understood that the purpose of the Federal Form was to have uniform requirements that did not allow states to burden voters using the Federal Form, thus ensuring that, "[n]o matter what procedural hurdles a

State's own form imposes, . . . a simple means of registering to vote in federal elections will be available." *Id.* at 2555 (footnote omitted). The Court's decision in this regard resonates with the EAC's finding that documentary proof of citizenship violates the NVRA, since documentary proof of citizenship is a "procedural hurdle" that a state may impose through its own form, but which runs directly counter to the purpose of the Federal Form.

The Supreme Court also made clear that EAC has discretion in determining the contents based on its interpretation of the NVRA, unfettered from state requirements. The Court explicitly acknowledged that the EAC has "validly conferred discretionary executive authority" to interpret the NVRA as part of its mission to determine the contents of the Federal Form, *id.* at 2259,[1] deferring to the EAC's interpretation that "§1973gg–7(b)(1) acts as both a ceiling and a floor with respect to the contents of the Federal Form." *Id.* In other words, the Court accepted the EAC's interpretation that only information "necessary" to determine the applicant's eligibility could be included on the Federal Form, meaning that not everything the states requested would automatically be included on the Federal Form.

Moreover, the roadmap laid out by the Supreme Court makes clear that the decision of whether or not to include documentary proof of citizenship on the Federal Form belongs to the EAC: if the states themselves were entitled to determine the information "necessary to enable the appropriate State election official to assess the eligibility of the applicant," 42 U.S.C. § 1973gg–7(b)(1), directing Arizona to renew its request to the EAC would be wholly unnecessary. After

[1] Indeed, the authority of the EAC to deny Arizona's request was never at issue in *ITCA*. The Supreme Court takes for granted that the EAC has legitimate decision-making power in determining what to include on the Federal Form. *See, e.g.*, *ITCA,* 133 S. Ct. at 2251 ("The contents of . . . the Federal Form are prescribed by a federal agency, the Election Assistance Commission."); *id.* at 2251-52 ("The Election Assistance Commission is invested with rulemaking authority to prescribe the contents of that Federal Form"); *id.* at 2252 ("Each state-specific instruction must be approved by the EAC before it is included on the Federal Form.").

all, the Court knew Arizona had enacted a documentary proof-of-citizenship law, and yet did not decide the matter on that basis.[2] Instead, the Court held that Arizona needed to go back to the EAC and show that it would otherwise be "precluded" from enforcing its citizenship requirement. *ITCA*, 133 S. Ct. 2258-59. In doing so, the Court made clear that the EAC had the authority to reject Arizona's request.

In short, not only did Congress preempt Plaintiffs' documentary proof-of-citizenship requirement, but the Supreme Court made clear that the ultimate decision-making power with respect to the contents of the Federal Form rests with the EAC. Furthermore, because Plaintiffs failed to show that they would be precluded from enforcing their voter eligibility requirements—an issue this Court did not decide, but is the key issue under the *ITCA* roadmap—the Defendant-Intervenors are likely to prevail on appeal.

C. Defendant-Intervenors Would Suffer Irreparable Harm Without a Stay

The Court should also issue a stay because Defendant-Intervenors and the voters they assist will suffer irreparable harm without one. For two decades, the Federal Form has provided a simple and accessible way for citizens to register to vote and for community-based organizations to conduct voter registration drives. In the absence of a stay, the Federal Form could be significantly altered a few months before a federal election, confusing voters, keeping eligible citizens off the voter rolls, and hindering Defendant-Intervenors in their mission to assist

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[2] During the February 11, 2014 hearing, this Court observed the absurdity of Plaintiffs' position when taken to the extreme, offering the following hypothetical:

> [A]ssume with me that the legislature of the State of Kansas passes a law, and the governor signs, saying that people of Swedish ancestry are not smart enough to vote and so they will be disenfranchised. It's now the law of the state of Kansas. Does the EAC have a nondiscretionary duty to adopt that position?

See Hr'g Tr. 15:13-19 Feb. 11, 2014. After attempting to sidestep the issue, Plaintiffs finally admitted that their stance leads to this uncomfortable conclusion. *Id.* at 16:11-25.

eligible citizens to participate in their democracy. Suddenly changing the Federal Form's procedures would complicate the League's work in any context, but those complications will be particularly costly in 2014, where elections for federal and statewide office will take place in both Arizona and Kansas. Before the Court's order, the League and other voter registration groups were able to use the Federal Form unfettered by any state documentation requirements in their voter registration activities, and the states were obligated to "accept and use" it. If the Court's order is immediately enforced, the documentary proof of citizenship requirement will further interfere with the League's voter registration activities in two ways. First, it deprives the League and other voter registration groups of the ability to help register eligible citizens who lack the states' prescribed documents. Second, the loss of the Federal Form will make it difficult or impossible for many League chapters to run voter registration drives, and for those that can, will force the League to expend significantly more labor on less effective ways of helping voters. The Court's order will also tangibly harm those citizens who lack the documentation required by the states or who will face additional obstacles in using the documentation they have. For example, League members were recently prohibited from photographing naturalization certificates for newly naturalized citizens as documentary proof of citizenship for voter registration. Furtado Decl. in Supp. of Mot. to Stay ¶¶ 15-20. These individuals will now lack any means of registering to vote through the League's naturalization ceremony voter registration drives, even though they have just obtained the most elementary documentary proof of citizenship.

Moreover, many citizens will likely be unaware of the new requirements and may unwittingly submit incomplete Federal Forms. Should a stay be denied and the Court's order be reversed on appeal, those voters whose registrations were unlawfully rejected or who were

misinformed about their registration status would have no apparent recourse. The Court should avoid this possibility by preserving the status quo until the election.

The harms imposed by the state forms' requirements are well established in this Court and the administrative record; those harms will only spread now that these requirements apply to every new voter registration in Arizona and Kansas. In both states, the League's activities were constrained by the states' documentary requirements, and the organization has registered fewer voters because of the state form's requirements. EAC000714 (Declaration of Robyn Prud'homme-Bauer, President of the League of Women Voters of Arizona ¶ 16 ("EAC Prud'homme-Bauer Decl.")); EAC000737-38 (Declaration of Dolores Furtado, President of the League of Women Voters of Kansas ¶¶ 15, 19 ("EAC Furtado Decl.")). One League chapter in Kansas went from registering over 300 voters in 2012 to under 40 in all of 2013. EAC000738 (EAC Furtado Decl. ¶ 20). Under the states' laws, the organization is often unable to help people complete voter registrations because it is not logistically feasible for its volunteers to copy and handle the necessary documentation. EAC000715-16 (EAC Prud'homme-Bauer Decl. ¶¶ 18-21); EAC000738-40 (EAC Furtado Decl. ¶¶ 18-28). In an Arizona county, the local League chapter distributes information to prospective voters but is unable to help voters complete the registration process, as the League has traditionally done for decades. EAC000715 (EAC Prud'homme-Bauer Decl. ¶ 18). In a different Arizona county, the local League chapter sometimes submits forms without documentary proof of citizenship and relies on local election officials to conduct outreach to complete the registration process. EAC000715 (EAC Prud'homme-Bauer ¶ 19). Prior to the Court's order, the states' obligations to accept the status quo Federal Form gave voter registration groups the ability to work around these issues in federal elections.

A telling example of the harm to voter registration work took place just over a week after the Court issued its order. On March 28, 2014, the Johnson County, Kansas League set out to register voters at a naturalization ceremony. Furtado Decl. in Supp. of Mot. to Stay ¶ 15. These ceremonies have been critical to the League's work since Kansas's law took effect; they are perhaps the only place where people are guaranteed to physically have documentary proof of their U.S. citizenship.[3] At the March 28 ceremony, when Johnson County League members attempted to photograph individuals' naturalization certificates on an iPad provided by the county Election Commissioner, U.S. Citizenship and Immigration Services (USCIS) employees instructed the League members to not photograph the documents. When a newly naturalized citizen attempted to photograph his certificate for these purposes, he was also told that he could not photograph or copy the document. The League members attempted to register 85 individuals but completed registrations for none of them. *Id.* ¶¶ 15-20. If League members and other voter registration groups continue to be prohibited from photographing these documents, there will be no way for the League to register voters at naturalization ceremonies.[4]

This would also significantly interfere with naturalized citizens' ability to register to vote. If they are unable to register at a naturalization ceremony and are prohibited from photographing or copying their naturalization certificate for a mailed registration and have no other documentary proof of their citizenship, these citizens would have to physically appear at an

[3] In an example of how critical such events have become, one League chapter in Kansas stopped all of its voter registration activities after the requirements' implementation and resumed only at naturalization ceremonies. EAC000739 (EAC Furtado Decl. ¶ 23).

[4] Federal law prohibits anyone without "lawful authority" from photographing a naturalization certificate. 8 U.S.C. § 1426(h). It is unclear how that provision ought to apply to copying for the purpose of voter registration. Nonetheless, based on this incident, it is appears that at least some federal officials are seeking enforce that provision in a way that prevents naturalized citizens from submitting complete voter registration applications.

election office with their paperwork to register to vote. *Id.* ¶ 22. If the Court's order is enforced, naturalized citizens will uniquely bear this burden.

As demonstrated so dramatically in Johnson County, the Court's order will deprive the League and other voting registration groups of the ability to help register eligible voters who lack documentary proof of their citizenship. This order unfortunately comes as the League is planning to ramp up its voter registration efforts in both states. Declaration of Robyn Prud'homme-Bauer in Support of Motion to Stay ¶ 5; Furtado Decl. in Supp. of Mot. to Stay ¶ 13. The Arizona League is anticipating increased interest in this year's election because it will feature contests for both federal and statewide office. Prud'homme-Bauer Decl. in Supp. of Mot. to Stay ¶ 5 (attached hereto as Exhibit 2). As part of its efforts, the League there is making plans to conduct voter registration drives on university campuses, which will be significantly hindered if the Court's order is enforced. The Federal Form is an important tool to register college students to vote, and the League has found it particularly useful in its campus efforts. *Id.* ¶ 6. In the League's experience, many students do not carry documentary proof of citizenship with them, and students originally from another state who do not possess an Arizona driver's license would be unable to register to vote if they do not have their U.S. passport or birth certificate with them. *Id.* ¶ 6. The League is also concerned about the loss of a voter registration option for individuals whose names do not match their documentation—a group disproportionately consisting of women, in the organization's experience. *Id.* ¶ 7; Furtado Decl. in Supp. of Mot. to Stay ¶ 9. Without the Federal Form, the League will be unable to offer an alternative to these students and other eligible citizens who may not have the requisite documents when attempting to register to vote.

The Court's order will also compel local League chapters to attempt to work within the states' requirements with no alternatives—but their methods for doing so often rely on extra labor and are not reliable. For instance, the Kansas League is considering assisting people without citizenship documents if volunteers can verify that they were born in Kansas and that their names have not changed. Furtado Decl. in Supp. of Mot. to Stay ¶ 13. Under this prospective plan, the League would ask local election officials to search birth records. (If local officials do not do so, those voters will not be registered.) For those individuals born in another state or whose names have changed, the League will have to rely on those individuals to attempt to complete their registrations on their own, and possibly for election officials to follow up on their own. *Id.* ¶ 13. However, the Kansas League understands that at least one Kansas county has stopped sending letters to people on its suspense list because doing so was costly and not effective for completing voter registration applications. *Id.* ¶ 8.

Kansas' own experience with its state form demonstrates the confusion and potential disenfranchisement that can ensue when a voter registration form is changed. Since Kansas adopted a new state registration form in 2013 requiring documentary proof of citizenship, tens of thousands of Kansas have been placed on "suspense" lists due to lack of documentation that was not required by the previous form. Initially, 20,201 individuals were unable to register. Pls.' Br. in Supp. of Mot. for Relief, Ex. B-1 (ECF No. 140-2). It took months for Kansas to devise procedures to help remove some of these would-be voters from the suspense list, and, as of late January, more than 12,000 remained in suspense with the election fast approaching. Pls.' Br. in Supp. of Mot. for Relief, Ex. B-2 (ECF No. 140-2).[5] Given the difficulties accompanying a

[5] Plaintiffs may contend that this data is irrelevant because of the relatively few Federal Form registrants in Kansas. However, this data indicates that thousands of prospective voters have already been affected by the state's documentary requirement. If enforced at this time, the

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registration form changed nearly 2 years before an election, it is likely that similar—if not more severe—confusion and trouble registering will ensue if another voter registration form is changed with little time to give notice or develop procedures for voters attempting to register with the new forms.

Additionally, a stay is also warranted in light of Defendant-Intervenors' pending appeal. In the event that the Tenth Circuit reverses the Court's order, the switch back to the status quo Federal Form could confuse voters even further and complicate the League's registration efforts at the height of the election cycle. In such a scenario, a large number of people will have had their voter registration applications unlawfully rejected but would still be unable to vote because they will not have been registered. Even if such individuals are registered, they may be misinformed as to their registration status and subsequently deterred from voting. These potential voters would effectively lose their right to vote. There is less potential harm in allowing Federal Form registrations to proceed without documentary proof of citizenship. If the Court stayed its order and the states later received a favorable decision from a reviewing court, the states could then verify the citizenship status of Federal Form registrants. The latter issue is correctable in a way that barring voter registrations is not.

All of the foregoing would further depress voter registration efforts in a year where the League's voter registration mission is at its most critical.

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Court's order would deny these individuals a means of registering to vote. The Federal Form was lightly used in the past because it offered no dramatic difference in procedure from the state form without a documentary requirement. With that requirement in place for the state form, potentially thousands of voters could register with the status quo Federal Form, making it more likely to be used than before.

D. Plaintiffs Would Not Be Harmed By Issuing a Stay

Plaintiffs contend that, without modification of the Federal Form, they will suffer substantial harm because non-citizens will register to vote in state elections and, to prevent such unlawful voting, Plaintiffs will be forced to implement a costly bifurcated election system. EAC001131 (Pls.' Br. in Supp. of Mot for Prelim. Inj. Relief at 21). However, there is no evidence that non-citizens have registered to vote in state elections using the Federal Form. And, in light of that lack of evidence, Plaintiffs' proposed bifurcated election system is wholly unnecessary. Maintaining the Federal Form in its current state pending resolution of an appeal will work no substantial harm upon Plaintiffs, and therefore, a stay is appropriate in this case.

1. Plaintiffs have presented no evidence that even a single non-citizen registered to vote using the current version of the Federal Form.

In pleadings before this Court, Plaintiffs argued that, if the Federal Form is not modified, they "will be forced to register unqualified voters" with that form. EAC001131 (Pls.' Mot. for Prelim. Inj. Relief at 27). However, at oral argument, Plaintiffs conceded that they have *no evidence whatsoever* that the Federal Form was used by even a single non-citizen to register to vote in Arizona or Kansas. Hr'g Tr. 165:25-166:3 Feb. 11, 2014 ("We [Kansas election officials] have not attempted to distinguish among the 20 aliens – and neither has Arizona attempted to distinguish among the 196 aliens – whether they used the Federal Form or the state form."). It is quite possible that *none* of the alleged non-citizens who registered to vote in Arizona and Kansas actually used the Federal Form—and Plaintiffs have failed to adduce a single shred of evidence suggesting otherwise. [6]

[6] Plaintiffs also failed to demonstrate that the individuals were non-citizens at the time they registered to vote. In Kansas, for instance, election officials identified the alleged non-citizens who registered to vote using a database of all individuals who applied for and obtained special driver's licenses for non-citizens. EAC000913 (Declaration of Brad Bryant ¶¶ 2-3). The twenty individuals Kansas alleged to be non-citizens at some point held special driver's licenses issued

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Plaintiffs have also argued that, unless the Federal Form is modified, they will be "forced to implement a bifurcated voter registration system that is unduly burdensome." EAC001131 (Pls.' Br. in Supp. of Mot. for Prelim. Inj. Relief at 21). However, any alleged harm that will arise from from this bifurcated system is both self-imposed and unnecessary in light of the fact that Plaintiffs have, for decades, maintained secure election processes without requiring documentary proof-of-citizenship at the time of voter registration.

Even if this Court accepts Plaintiffs' argument that additional steps must be taken to prevent non-citizens from registering and voting, Plaintiffs have demonstrated that they can verify citizenship status following registration, making their proposed bifurcated elections wholly unnecessary. Specifically, Kansas explained to this court that through its election officials' "diligent efforts," the state was able to verify the citizenship status of "roughly 7,700" United States citizens who were either unwilling or unable to provide documentary proof-of-citizenship, or who were unaware that such documentary proof was even required. Pls.' Br. in Supp. of Mot. for Relief. (ECF No. 140) at 18-19. The success of Plaintiffs' "diligent efforts" undermines any argument that they will suffer substantial harm from a stay, given that such efforts may very well eliminate the basis for Plaintiffs' purported need for bifurcated elections.

Finally, even in the event that bifurcated elections should be necessary, Plaintiffs dramatically overstate the burden and cost of conducting such elections. Arizona claims that it will need to design over 4,000 new ballot styles and print over 100,000 federal-only ballots, at a total cost of over $250,000. EAC001746 (Declaration of Tammy Patrick ¶¶ 13-16). However, despite claiming a need for that many ballots, Arizona has identified only 954 individuals "who

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to non-citizens. *Id.* However, Plaintiffs failed to consider—much less discredit—the possibility that these alleged non-citizens completed the naturalization process sometime after receiving their driver's license but before registering to vote.

would be required to vote a Federal Only ballot" in any bifurcated election. EAC001745-46 (Patrick Decl. ¶¶ 12(e)(iii)). Given that (1) there will be only one federal race on any 2014 Arizona ballot—an election for a member of the House of Representatives[7]—and (2) Arizona has only nine congressional districts, Arizona's estimate of the cost imposed by any bifurcated election is overblown. Maintaining the current version of the Federal Form pending an appeal of this case does not require a bifurcated election in the first place, and even Plaintiffs choose to impose upon themselves the costs of such an election, those costs will hardly amount to "substantial harm" in light of the fact that only a tiny number of voters will be eligible to participate in the Federal-Only balloting for a single federal election.

E. Denying A Stay Would Be Contrary To The Public Interest

Congress enacted the NVRA to "increase the number of eligible citizens who register to vote" and to protect citizens from "discriminatory and unfair registration laws and procedures" that can have "a direct and damaging effect on voter participation." 42 U.S.C. § 1973gg. To further these goals, Congress provided for the Federal Form to "guarantee[] that a simple means of registering to vote . . . will be available" regardless of "what procedural hurdles a State's own form imposes." *ITCA*, 133 S. Ct. at 2255. Maintaining the current version of the form—without Plaintiffs' documentary proof-of-citizenship requirement—will further the public interest in having "a simple means of registering to vote." *Id.* Implementing Plaintiffs' changes now, on the other hand, while this matter is still pending final resolution, will risk disenfranchising thousands of eligible U.S. citizens who seek to register using the Federal Form. Kansas concedes that over 7,700 eligible U.S. citizens would have been disenfranchised by the documentary proof-of-citizenship requirement, were it not for the "diligent" efforts of Kansas

[7] Arizona's United States Senators John McCain and Jeff Flake were most recently elected in 2010 and 2012, respectively. They will not face reelection until 2016 and 2018, respectively.

election officials in verifying citizenship status after registration. *See* Pls.' Br. in Supp. of Mot. for Relief. (ECF No. 140) at 18-19. If the Federal Form is modified immediately, it is likely that more citizens will be denied their right to register and vote, all while the issues before this court continue to remain in dispute on appeal. Congress passed the NVRA to increase voter turnout. Without the "simple means of registering to vote" using the Federal Form, the public interest that Congress has laid out will be harmed. *ITCA*, 133 S. Ct. at 2255. Thus, the public interest favors a stay in this case.

III. CONCLUSION

Because the League has shown a substantial likelihood of success on the merits and the balance of harms weighs heavily in Defendants' favor, the League respectfully requests that the Court stay its March 19, 2014 Order pending the Defendant-Intervenors' appeal to the Tenth Circuit.

/s/ David G. Seely

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CERTIFICATE OF SERVICE

I certify that on April 1, 2014, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

/s/ David G. Seely