

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

LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES, LEAGUE OF
WOMEN VOTERS OF ALABAMA, LEAGUE
OF WOMEN VOTERS OF GEORGIA,
LEAGUE OF WOMEN VOTERS OF KANSAS,
GEORGIA STATE CONFERENCE OF THE
NAACP, GEORGIA COALITION FOR THE
PEOPLE'S AGENDA, MARVIN BROWN, JOANN
BROWN, and PROJECT VOTE

Plaintiffs,

vs.

BRIAN D. NEWBY, in his capacity as the Executive
Director of The United States Election Assistance
Commission; and

THE UNITED STATES ELECTION ASSISTANCE
COMMISSION

Defendants.

Case No. 16-cv-236 (RJL)

**MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65 and LCvR 65.1, Plaintiffs in the above-captioned matter hereby move the Court to issue a Temporary Restraining Order and Preliminary Injunction enjoining Defendants Brian Newby and the Election Assistance Commission from enforcing Mr. Newby's decision granting state requests made by Alabama, Georgia, and Kansas to amend the national uniform mail-in voter registration form (the "Federal Form"), prescribed by the National Voter Registration Act of 1993, 52 U.S.C. § 20501 *et seq.*, to require documentary proof of

citizenship with voter registration applications submitted in those states using the Federal Form, and to take all actions necessary to restore the status quo ante pending a determination on the merits.

In support of this motion, Plaintiffs rely upon the attached memorandum of points and authorities. A proposed order is attached.

ORAL ARGUMENT REQUESTED.

February 17, 2016

Respectfully submitted,

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**Pro hac vice motion pending*

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

INTRODUCTION

On the eve of presidential primaries with voter registration deadlines fast approaching, Mr. Brian Newby, the Executive Director (“Executive Director”) of the U.S. Election Assistance Commission (“EAC” or “Commission”), has unlawfully modified the national uniform mail-in voter registration form (“Federal Form”) prescribed by the National Voter Registration Act of 1993, 52 U.S.C. § 20501 *et seq.* (“NVRA”). On January 29, 2016, the Executive Director unilaterally granted requests by Alabama, Georgia and Kansas (collectively, the “States”) to modify the Federal Form’s instructions to require voter registration applicants in those States to submit documentary proof of U.S. citizenship. By doing so, the Executive Director acted beyond his authority and contrary to longstanding Commission policy and precedent that documentary proof of citizenship was not “necessary for States to assess the eligibility” of a voter registration application submitted on the Federal Form. As a result of the Executive Director’s actions, and for the first time since Congress created the Federal Form, documentary proof of citizenship is now required to register to vote in *federal* elections in Alabama, Georgia, and Kansas. The Executive Director immediately implemented these changes to the Federal Form on the EAC’s website. Unless the Court enjoins the Executive Director’s actions, thousands of voters may be disenfranchised.

The Executive Director’s actions violated the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500-596, 706, in at least *five* respects, any of which individually is grounds for vacating the Executive Director’s actions:

First, the Executive Director acted contrary to law when he unilaterally changed longstanding EAC policy without the approval of three Commissioners as required by the Help America Vote Act (“HAVA”), 52 U.S.C. § 20928.

Second, The Executive Director acted contrary to the EAC's *own* internal policy and governance guidelines by issuing final policy determinations that altered longstanding precedent on matters that the Commission had expressly reserved to itself through formal Commission votes. On information and belief, the Executive Director also violated EAC policy by engaging in prohibited *ex parte* communications with officials from the States, irrevocably tainting the decision making process over these important policy determinations. The Executive Director's violation of the EAC's own internal governance guidelines also render his actions *ultra vires*.

Third, the Executive Director did not provide formal notice and opportunity to comment or present the States' requests to the Commissioners for their consideration, procedures which are required by HAVA and the EAC's own internal policies. As those are the administrative procedures that the EAC utilized in establishing and enforcing its original policy, the agency is required to employ those same mechanisms to make substantive changes to that policy. Instead, the Executive Director unilaterally granted the requests himself, which is plainly insufficient to create a new rule governing the Federal Form.

Fourth, the Executive Director did not explain the grounds for this sudden reversal in EAC policy and precedent. This is a telling omission because the NVRA permits the EAC to require only information that it concludes is "necessary," and the EAC reaffirmed its conclusion that documentary proof was *unnecessary* just two years ago in a well-reasoned 46-page opinion. The failure to provide any contemporaneous rationale for the dramatic change in EAC policy and precedent renders the Executive Director's decision arbitrary and capricious on its face.

Finally, the Executive Director's actions exceeded the scope of the EAC's statutory authority. The NVRA prescribes the content of the Federal Form, and precludes any documentary proof of U.S. citizenship requirement absent a showing of necessity. *See Arizona*

v. Inter Tribal Council of Arizona, Inc., 133 S. Ct. 2247, 2259 (2013) (“*ITCA*”). By adding a documentary proof of citizenship requirement beyond the specific substantive voter registration requirements set forth in the Federal Form, without concluding such information was “necessary,” the Executive Director acted beyond the EAC’s statutory authority.

The Executive Director’s unlawful actions are the latest chapter in a continuing campaign by certain states over the past decade to require that voter registration applicants present documentary proof of U.S. citizenship when using the Federal Form. Beginning with Arizona in 2006, several States have requested—multiple times in some cases, like Kansas and Arizona—that the EAC amend the Federal Form to require documentary proof of citizenship. The EAC has repeatedly denied those requests. Arizona’s refusal to accept voter registration applications on the Federal Form without documentary proof culminated in the U.S. Supreme Court’s decision in *ITCA*, 133 S. Ct. 2247, which held that States must “accept and use” the Federal Form as implemented by the EAC. Arizona, Kansas and Georgia thereafter submitted new requests to require documentary proof of citizenship, which the EAC’s prior Executive Director rejected in 2014, based on existing EAC policy, in a formal decision finding that documentary proof of citizenship requirements were inconsistent with the purposes of the NVRA, and were not shown to be necessary by any evidence provided by the States. The U.S. Court of Appeals for the Tenth Circuit affirmed the prior Executive Director’s decision and rejected Kansas and Arizona’s subsequent APA challenge (Georgia did not challenge the EAC’s decision). See *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2891 (2015).

It is against the backdrop of this failed campaign by these states that Mr. Brian Newby assumed office as the EAC’s Executive Director in November 2015. Mr. Newby is a former

Kansas election official appointed by the Kansas Secretary of State. As a Kansas official, Mr. Newby publicly supported Kansas's efforts to achieve documentary proof of citizenship requirements, including by filing an affidavit before the EAC in support of Kansas's 2014 request to modify the Federal Form. Just two weeks after Newby was appointed as the EAC's Executive Director, Kansas submitted its *fifth* request to amend the Federal Form. Tellingly, while Mr. Newby failed to provide formal public notice and an opportunity to comment before changing the EAC's policy, he entertained several *ex parte* communications from the Kansas Secretary of State, along with similar communications with officials from Alabama and Georgia, before he approved the States' requests.

The timing of the Executive Director's decision jeopardizes the integrity of several upcoming federal elections. Alabama's primary election will be held on March 1, 2016, and the deadline for registration just passed on February 15, 2016. Kansas's caucuses will be held on March 5, 2016, with registration available up to and including the day of the caucus for one of the two major political parties. The voter registration deadline for Georgia's March 1 presidential primary election has already passed, but the registration deadline for its May 24 general federal and state primary election is April 26, 2016. The Executive Director's decisions directly impact these upcoming elections.

The Executive Director's decision will substantially burden the Plaintiffs' ability to conduct voter registration drives, and will deprive eligible voters of the right to vote in federal primary and general elections. Without a temporary restraining order and preliminary injunction, the Executive Director's unlawful actions will cause substantial, immediate and irreparable harm to the Plaintiffs and voters in Alabama, Georgia and Kansas. The Executive Director's unilateral modifications to the Federal Form should be immediately enjoined.

I. BACKGROUND

A. Origins of the Federal Form

Congress enacted the National Voter Registration Act principally to “increase the number of eligible citizens who register to vote in elections for Federal office.” 52 U.S.C. § 20501(b)(1). By providing for a single registration form that “[e]ach State shall accept and use,” *id.* § 20505(a)(1), Congress sought to ensure that states could not disenfranchise voters by setting discriminatory or burdensome registration requirements. *See ITCA*, 133 S. Ct. at 2255. In passing the NVRA, Congress also recognized the need to protect the “integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). Both Houses of Congress debated and voted on the specific question of whether to permit states to require documentary proof of citizenship in connection with the Federal Form, striking a balance among the statute’s purposes, and ultimately rejected such a proposal. *See* S. Rep. No. 103-6 (1993); 139 Cong. Rec. 5098 (1993); H.R. Rep. No. 103-66, at 23 (1993) (“Conf. Rep.”); 139 Cong. Rec. 9231-32 (1993). In particular, the final Conference Committee Report concluded that it was “not necessary or consistent with the purposes of this Act” and “could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the [Act’s] mail registration program.” Conf. Rep. at 23-24 (1993).

The Federal Form was also intended to benefit voter registration organizations, such as Plaintiffs the League, Project Vote and others, to streamline the voter registration process and mitigate varying and confusing state registration laws. *See* 52 U.S.C. § 20505(b) (mandating that state officials make the Federal Form available to “governmental and private entities, with particular emphasis on making them available for organized voter registration programs”). Underlying these efforts was the understanding that states could not unilaterally change the

Federal Form. Rather, the development and implementation of the Federal Form was—and remains—a responsibility delegated exclusively to a federal agency.

The NVRA mandated that the Federal Form could be utilized by the citizens of any state covered by the NVRA to register for federal elections.¹ *Id.* §20505. The EAC’s predecessor agency, the Federal Election Commission (“FEC”),² developed the initial Federal Form through an extensive notice and comment rulemaking process. *See* 58 Fed. Reg. 51,132 (Sept. 30, 1993) (Advanced Notice of Proposed Rulemaking); 59 Fed. Reg. 11,211 (Mar. 10, 1994) (Notice of Proposed Rulemaking); 59 Fed. Reg. 32,311 (June 23, 1994) (Final Rules).

The Federal Form is formatted as a postcard that the applicant can simply fill out and mail in. The contents of the Form are governed by 11 C.F.R. § 9428.4(b)(1)-(3), which specifies the precise information that the Federal Form can request from an applicant. Pursuant to those duly enacted regulations, the Federal Form has a number of safeguards to prevent non-citizen registration, including an attestation clause that sets out the requirements for voter eligibility, requiring registrants to confirm U.S. citizenship under penalty of perjury, and imposing criminal penalties on persons who knowingly and willfully engage in fraudulent registration practices. Applicants must check a box at the top of the form to affirm U.S. citizenship, and are clearly directed at several points in the instructions and on the postcard itself not to complete the form if they are not citizens. The Federal Form further requires the applicant to sign the bottom of the form and swear or affirm under penalty of perjury that he or

¹ The NVRA applies to 44 states. Six states are exempt because they have either no voter registration requirement or continuously offered same day voter registration at the polls since 1994. *See* 52 USC § 20503.

² When the NVRA was originally passed, the agency responsible for implementing the NVRA was the FEC. HAVA later created the EAC and transferred to the EAC the responsibility of prescribing regulations necessary for a mail voter registration form for elections for Federal office. *See* 52 U.S.C. §§ 20508(a), 20921, 20929.

she is a U.S. citizen and further that, “[i]f 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.”

The Federal Form was adopted without any requirement for documentary proof of citizenship. *See* 11 C.F.R. § 9428.4; Nat’l Voter Registration Act of 1993, 59 Fed. Reg. 32,311 (June 23, 1994). The FEC did not expressly address documentary proof of citizenship during the course of the rulemaking; no state suggested that documentary proof might be “necessary” under the NVRA. Addressing whether to require information regarding naturalization, the agency determined that “[t]he issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury. To further emphasize this prerequisite to the applicant, the words ‘For U.S. Citizens Only’ will appear in prominent type on the front cover of the national mail voter registration form.” 59 Fed. Reg. 32, 316 (June 23, 1994).

To ensure that applicants “receiv[e] the information needed to correctly complete the [Federal Form] and attest their eligibility,” 59 Fed. Reg. 32,317, the Form includes instructions as to each state’s voter eligibility requirements and instructions for filling out the fields on the form. *See* 11 C.F.R. § 9428.4. Even prior to the Executive Director’s action in this case, a U.S. citizenship requirement was additionally listed in the state-specific instructions for several states, including Alabama, Arizona, Georgia and Kansas. *See* Schmidt Dec. Ex. 1. The instructions did not mention documentary proof of citizenship.

B. Arizona’s EAC Requests and the Supreme Court’s *ITCA* Decision

In 2006, Arizona requested that the EAC modify Arizona’s state-specific instructions to the Federal Form to reflect new state legislation that required documentary proof of citizenship for voter registration. On March 6, 2006, after consideration by a quorum of Commissioners, the Executive Director denied the request on behalf of the agency, noting that the EAC had concluded that inclusion of a documentary proof requirement would violate the NVRA and that

Arizona must “accept and use” the Federal Form without imposing additional burdens. Nonetheless, Arizona continued to reject Federal Form applicants who did not present proof of citizenship, and submitted a request for reconsideration. In July 2006, the EAC again considered the question and voted on whether to reverse course and modify the Federal Form pursuant to Arizona’s request. The measure failed by a 2-2 vote, having not received approval of three members of the EAC as required by law for the EAC to take any action. *See* Schmidt Dec. Ex. 2; 52 U.S.C. § 20928. As Commissioner Ray Martinez III explained, the EAC had “established its own interpretive precedent regarding the use and acceptance of the Federal Form [and] upheld established precedent from [the FEC].” *See* Schmidt Dec. Ex. 3. Under this precedent, the “language of NVRA mandates that the Federal Form, without supplementation, be accepted and used by states to add an individual to its registration rolls.” *Id.*

Rather than challenge the EAC’s rejection of its request under the APA, Arizona continued to require proof of citizenship from Federal Form applicants, prompting the lawsuit that resulted in the Supreme Court’s decision in *Arizona v. Inter Tribal Council of Arizona, Inc.* (“*ITCA*”). 133 S. Ct. 2247 (2013). In *ITCA*, the Supreme Court held that Arizona’s documentary proof of citizenship requirement was preempted by the NVRA with respect to applicants using the Federal Form. *Id.* The decision noted that the NVRA required the EAC to include in the form “only such identifying information . . . as is *necessary* to enable the appropriate State official to assess the eligibility of the applicant,” 52 U.S.C. § 20508(b)(1) (emphasis added). The Supreme Court agreed that the NVRA requires all states to “accept and use” the “Federal Form,” which, as developed and approved by the EAC, did not require documentary proof of citizenship. As the Court explained, “[n]o matter what procedural hurdles a State’s own form imposes, the Federal Form guarantees that a simple means of registering to

vote in federal elections will be available.” *Id.* at 2255. The *ITCA* Court further found that the NVRA’s “accept and use” requirement is a constitutional exercise of Congress’ power under the Elections Clause, and preempts state regulations governing the “Times, Places and Manner” of holding federal elections. *Id.* at 2253. Accordingly, the only route for any state to add a documentary proof of citizenship requirement to Federal Form applicants would be to request that the EAC alter the Federal Form and, if necessary, to “challenge the EAC’s rejection of that request in a suit under the Administrative Procedure Act.” *Id.* at 2259.

C. The Tenth Circuit Holds that the EAC’s Denial of States’ Requests was Permissible

Just two days after the U.S. Supreme Court decision in *ITCA*, Arizona once again renewed its request that the EAC modify the Federal Form, and Kansas renewed a similar request it had first made in 2012. Georgia submitted a request of its own a month later. The Executive Director respectfully deferred all three requests because the EAC lacked a quorum of Commissioners to consider the matter. In an effort to compel EAC action, Arizona and Kansas³ brought suit against the agency. The district court granted motions to intervene in that action brought by the League, Project Vote, Inc., and others. *See Kobach v. U.S. Election Assistance Comm’n*, No. 13-CV-4095-EFM-DJW, 2013 WL 6511874, at *5 (D. Kan. Dec. 12, 2013). Despite the absence of a quorum required to consider changes in agency policy, the district court ordered the EAC to issue a final agency action responding to the requests.

On January 17, 2014, after a public notice and comment period, the Executive Director of the EAC issued a thorough 46-page decision denying the pending requests of Arizona, Georgia and Kansas. Consistent with all previous determinations since its inception, the EAC found that the states had failed to demonstrate that documentary proof of citizenship was “necessary”

³ This suit was brought by Kris Kobach and Ken Bennett, secretaries of state of Kansas and Arizona.

within the meaning of the NVRA. Considering the extensive record submitted in response to its request for public comment, the Executive Director determined that Congress had rejected a similar requirement when deliberating over the NVRA; that granting the States' requests would contravene other EAC rules; that the States' requests were inconsistent with previous EAC determinations; and that the requests would undermine the purposes of the NVRA by hindering voter registration and thwarting organized registration efforts. *See* Schmidt Dec. Ex. 4 at 20-42.

Kansas and Arizona challenged the EAC's action under the APA; Georgia declined to do so. Ultimately the U.S. Court of Appeals for the Tenth Circuit sustained the EAC's decision, ruling that the EAC was not obligated under either the NVRA or the Constitution to allow the requested modifications to the Federal Form. *See Kobach*, 772 F.3d 1183. The Tenth Circuit held that "permitting such state alterations threaten[s] to eviscerate the [Federal] Form's purpose of 'increasing the number of eligible citizens who register to vote.'" *Id.* at 1195 (quoting *ITCA*, 133 S. Ct. at 2256). Unless the information is "necessary to enforce the States' voter qualifications, the Federal Form must remain free of the State's "procedural hurdles," as Congress intended. *ITCA*, 133 S. Ct. at 2255. Noting that the EAC had previously rejected the States' request to include documentary proof of citizenship, the court determined that "had the EAC accepted the states' requests, it would have risked arbitrariness, because Arizona and Kansas offered little evidence that was not already offered in Arizona's 2005 request, which the EAC rejected. Changing course and acceding to their requests absent relevant new facts would conflict with the EAC's earlier decision." *See* 772 F.3d at 1198..

Arizona and Kansas filed a petition for certiorari before the Supreme Court, which was denied. *See Kobach v. U.S. Election Assistance Comm'n*, 135 S. Ct. 2891 (2015).

D. Authority of the EAC Executive Director

Although the EAC lacked a quorum of Commissioners at the time of the EAC decision, the Tenth Circuit concluded that under a prior delegation of authority by the Commission when a quorum existed (which has been subsequently superseded, *see infra* at Part I.E.), the Executive Director had authority to reject the requests of Arizona, Georgia and Kansas because they were inconsistent with the EAC's policies and then-existing procedures. *Kobach*, 772 F.3d at 1193-94.

In rejecting requests from Arizona, Georgia and Kansas to modify the Federal Form, EAC Executive Director Alice Miller was acting under two sources of authority: (1) prior EAC policy established through notice and comment rulemaking, and consistently maintained by votes of at least three Commissioners operating with a full quorum, and (2) an express delegation of authority from the Commissioners to apply agency policy and "maintain the [Federal Form]."

While HAVA provides that any action that the EAC is authorized to take "may be carried out only with the approval of at least three of its members," a "limited subdelegation of decisionmaking authority" may be granted to EAC staff with formal approval of three or more Commissioners. 52 U.S.C. § 20928; *Kobach*, 772 F.3d at 1191.

In its "Roles and Responsibilities Statement," dated September 15, 2008, a quorum of EAC Commissioners validly delegated certain authority to the Executive Director, including the responsibility to "[i]mplement and interpret [policies, regulations, and guidance] issued by the commissioners," and to "[m]anage the daily operations of EAC consistent with Federal statutes, regulations and EAC policies." The Statement also charged the Executive Director with authority to "[m]aintain the Federal Voter Registration Form consistent with the NVRA and EAC Regulations and policies." However, as the Tenth Circuit noted, "the 2008 subdelegation did not transfer the Commission's full power," but rather limited the Executive Director's authority to "maintaining the Federal Form *consistent with the Commissioners' past directives*

unless and until those directions were countermanded.” *Kobach*, 772 F.3d at 1193-94 (emphasis added).

Additionally, the Executive Director is prohibited from engaging in certain *ex parte* communications, as outlined in the EAC’s 2006 “Ex Parte Communications Policy.” *See* Schmidt Dec. Ex. 5. That policy specifies that “[n]o Commissioner or staff member with decision making authority shall communicate *ex parte* with any prohibited individual regarding a particular matter before the Commission.” *Ex parte* communications are defined as “off the record and nonpublic communications” while “prohibited individuals” include “any individual representing an entity or industry which is regulated” by the EAC. “Particular matters” are “matters over which EAC has decision making authority.”

E. The EAC’s Quorum is Restored

On January 13, 2015, three new Commissioners were sworn into the EAC following their nomination by the President and unanimous confirmation by the U.S. Senate. The appointment of the Commissioners, including two Republicans and one Democrat, restored the EAC’s quorum for the first time since 2010.

Among the EAC’s first official actions was to clarify and further restrict the Commission’s previously delegated authority to the Executive Director through a new “Election Assistance Commission Organizational Management Policy Statement,” which became effective February 24, 2015 (“2015 Policy Statement”). *See* Schmidt Dec. Ex. 6. Among other things, the 2015 Policy Statement confirmed that

Any action of the Commission authorized by HAVA requires approval of at least three of its members. 42 U.S.C. § 15328.

....

II. Division of authority regarding policymaking and day-to-day operations

1. The Commissioners shall make and take action in areas of policy. Policymaking is a determination setting an overall agency mission, goals and objectives, or *otherwise setting rules, guidance or guidelines*. Policymakers set organizational purpose and structure, or the ends the agency seeks to achieve. *The EAC makes policy through the formal voting process.*

2. The Executive Director in consultation with the Commissioners is expected to: (1) *prepare policy recommendations* for commissioner approval, (2) implement policies *once made*, and (3) take responsibility for administrative matters. The Executive Director may carry out these responsibilities by delegating matters to staff.

Id. at 2 (emphasis added). The 2015 Policy Statement expressly superseded the Commission's earlier delegations of authority to the Executive Director, including the 2008 "Roles and Responsibilities Statement," *see id.* at 1 (providing that the 2015 Policy Statement supersedes 2008-2012 statements and "replaces any existing EAC policy or document that is inconsistent with its provisions"). The 2015 Statement makes no reference to the Federal Form, or policy changes thereto, as being within the authority of EAC Executive Director.

F. Brian Newby is Appointed as Executive Director of the EAC

On November 2, 2015, the Commission appointed Brian Newby to serve as Executive Director. For the 11 years prior to his appointment, Mr. Newby acted as an election official in the state of Kansas. As the Election Commissioner of Johnson County, the largest county in Kansas, Mr. Newby worked under the Kansas Secretary of State making the request at issue here, and has been involved in Kansas's continuous efforts to compel burdensome proof of citizenship requirements as a barrier to voter registration, including testifying in favor of implementation of the requirement and publicly commenting on his actions to help enforce the law on many occasions. *See Schmidt Dec. Ex. 7.*

On January 3, 2014, Newby submitted comments to the EAC in support of granting Kansas's August 9, 2012 request to require documentary proof of citizenship with the Federal Form. Writing to the EAC, Newby "respectfully request[ed] that the voter registration form maintained for Kansans by the Election Assistance Commission (EAC) be modified to the full extent previously requested by the Kansas Secretary of State." Schmidt Dec. Ex. 8.

Under the Secretary of State's leadership, tens of thousands of voter registration applications in Kansas have been held on a "suspense list" as incomplete because of their supposed failure to provide documentary proof of citizenship. In January 2014, only a year after the requirement was first enforced, that list contained over 20,000 names. Kansas then reduced the list after using birth certificate records to verify the citizenship and Kansas birth of nearly half of the voters with suspended applications. By October of 2014, the number of people on the suspense list exceeded 27,000. By August 2015, it exceeded 35,000. As of February 2016, after Kansas implemented a new policy of removing the names of those whose applications have been incomplete for over 90 days, the suspense list still contains more than 10,500 names.

G. The Executive Director Unilaterally Grants Requests by Alabama, Georgia and Kansas to Require Documentary Proof of Citizenship

On or about November 17, 2015, just fifteen days after Mr. Newby's appointment as Executive Director, Kansas submitted its *fifth* request to the EAC to require documentary proof of citizenship. *See* Schmidt Dec. Ex. 9. Kansas referenced its statutory requirement of documentary proof of citizenship to register to vote, and purported to include new evidence showing noncitizens registering or voting. In fact, the evidence was of the same type already reviewed by the EAC in its January 17, 2014 decision, and included individual cases of alleged non-citizen registration that had already been submitted to the EAC. Kansas also cited its adoption of Kansas Administrative Regulation 7-23-15, which purported to interpret the state's

new election code by adding a 90-day requirement to provide proof of citizenship after registering, but the request added no new substance relating to Federal Form applicants.

On November 19, 2015, two days after receiving Kansas's request, Mr. Newby wrote to Kansas stating that "this office" was "currently reviewing" the state's request. Schmidt Dec. Ex. 10.

On December 21, 2015, Counsel for the League submitted a letter to Mr. Newby in response to Kansas's latest request. The letter reminded the EAC that it could implement new modifications to the Federal Form only through notice and comment rulemaking, that modifying the Federal Form as requested by Kansas would constitute an official EAC action requiring a vote of at least three Commissioners, and that modifying the Federal Form to allow documentary proof of citizenship would violate the NVRA, as previously affirmed by the EAC and the Tenth Circuit. *See* Schmidt Dec. Ex. 11. Mr. Newby confirmed receipt of this letter on January 23, 2016, thirty-two days after the League's letter was submitted.

On December 24, 2015, Counsel for Project Vote submitted a letter to Mr. Newby in response to Kansas's latest request, noting that the specific issue had been considered and denied following a notice and comment procedure in 2014. The letter also explained that any modification to the Federal Form would require a notice and comment rulemaking procedure because it would require a revision to relevant federal regulations and would reverse a substantive position of the EAC, and that granting Kansas's request would be arbitrary and capricious and contrary to law. *See* Schmidt Dec. Ex. 12. Mr. Newby confirmed receipt of this letter on January 23, 2016, twenty-nine days after Project Vote's letter was submitted.

On January 21, 2016, the Kansas Secretary of State appeared before a Kansas Senate Committee and addressed the status of the state's renewed request to the EAC. On information

and belief, the Secretary of State twice assured committee members that the Federal Form would be changed before the next election, though the EAC had not yet publicly taken action on Kansas's request. *See Zachary Roth, Federal agency helps red states make voter registration harder*, MSNBC.com, Feb. 4, 2016, <http://www.msnbc.com/msnbc/federal-agency-helps-red-states-make-voter-registration-harder>. In an interview with a media organization, the Executive Director admitted that he had communicated with election officials in Alabama and Kansas, including Kansas's Secretary of State, regarding changes pertaining to documentary proof of citizenship requirements prior to making a final decision. Commissioners were not included in those discussions because, according to Mr. Newby, "[i]t wouldn't have been proper." *See id.*

On January 29, 2016, Mr. Newby—in his capacity as the recently-appointed Executive Director of the EAC—took unlawful action to unilaterally alter the Federal Form. The EAC did not issue any notice seeking public comment on Kansas's request; nor did the Commission consider or vote on Kansas's renewed request; nor did three Commissioners approve Kansas's renewed request. Nonetheless, in contravention of these clear legal requirements and longstanding and established EAC policy on this very question, of which the Executive Director was expressly advised by the League and Project Vote, the Executive Director granted Kansas's request and immediately changed the Federal Form on the EAC website with instructions informing Kansas voter registration applicants that they must submit a "document [specified therein] demonstrating United States citizenship within 90 days of filing the application." *See Schmidt Dec. Exs. 13 & 14.*

Mr. Newby did not stop there. Alabama and Georgia previously had requested that the EAC amend the Federal Form to require voter registrations in those states to supply documentary proof of citizenship. Alabama's request was made on December 18, 2014, and Georgia's request

was submitted on August 1, 2013. *See* Schmidt Dec. Exs. 15 & 16. (In his January 29, 2016 letter to Alabama, Newby referred to a follow-up request, purportedly submitted by Alabama to the EAC on February 19, 2015, but no such letter appears on the EAC website.) The EAC had already denied Georgia's request on January 17, 2014, following the notice and comment period during which the Arizona and Kansas requests were considered. (Unlike Arizona and Kansas, Georgia did not challenge the EAC's denial of its request.)

Neither the Executive Director nor the EAC provided any public notice that either of those outdated requests were again under consideration, and the Executive Director did not offer any explanation for the sudden review and subsequent approval of those modifications. Yet the Executive Director granted Alabama's and Georgia's requests without any additional notice seeking public comment on the requests from Alabama or Georgia; without any consideration or vote by the Commission; and without the approval of three Commissioners. The Executive Director immediately changed the Federal Form on the EAC website to require Alabama and Georgia voter registration applicants to submit documentary proof of citizenship with their voter registration applications on the Federal Form. *See* Schmidt Dec. Exs. 17 & 18. The respective state-specific instructions were modified to require Georgia applicants to supply "satisfactory evidence of U.S. citizenship," and to require (rather than "request," as in the original version) Alabama applicants to provide their social security numbers at registration, and to inform them that they "shall not be registered until the applicant has provided satisfactory evidence of United States citizenship." *See* Schmidt Dec. Ex. 14.⁴

⁴ The Executive Director's letter to Alabama stated that additions to the state-specific instructions were indicated in italics. The addition of the proof of citizenship instruction was, apparently erroneously, not indicated in italics, but it was in fact an addition to the state-specific instructions for Alabama, as requested by the state on December 18, 2014. *See* Schmidt Dec. Ex. 17.

The Executive Director provided no written explanation for these decisions, nor did he state that the EAC had made any conclusion regarding the consistency of the changes with federal law. In an interview with a media organization that is not part of the administrative record, the Executive Director took the position that he had the authority to unilaterally alter the instructions to the Federal Form, and further stated that he was in fact *required* to change the instructions in response to any state's request. *See Zachary Roth, Federal agency helps red states make voter registration harder*, MSNBC.com, Feb. 4, 2016, <http://www.msnbc.com/msnbc/federal-agency-helps-red-states-make-voter-registration-harder>. Mr. Newby's post-regulatory action rationale flies in the face of the Tenth Circuit's express holding "that the EAC is *not* compulsorily mandated to approve state-requested changes to the Federal Form." *Kobach*, 772 F.3d at 1194 (emphasis added).

The Executive Director did not make, and did not have the authority to make, the statutorily-required finding that the requested changes were "necessary" for the States to enforce their voter qualifications. No significant facts or circumstances have changed since the EAC's 2014 decision rejecting requests from Arizona, Georgia and Kansas to modify the Federal Form by requiring documentary proof of citizenship.

Upon the Executive Director's modifications to the Federal Form, voter registrants in Alabama, Georgia and Kansas are now being informed that they cannot register to vote in federal elections using the Federal Form without first supplying documentary proof of citizenship. Indeed, on February 5, 2016, Alabama further signaled that it will promptly begin requiring documentary proof of citizenship from new voting registrants using the Federal Form, stating that its "Office of the Secretary of State will begin working towards implementation now that we have received permission from the Election Assistance Commission[.]" *Alabama Secretary of*

State Releases Statement Regarding Voting Citizenship, Feb. 6, 2016, available at <http://www.sos.alabama.gov/PR/PR.aspx?ID=10291>; see also Permaloff Declaration ¶ 21. Additionally, Kansas has already begun requiring documentary proof of citizenship from new voting registrants using the Federal Form. See Chris Arnold, *Kobach enforcing debated voter registration rule*, KSN.com, Feb. 12, 2016, <http://ksn.com/2016/02/12/kobach-enforcing-debated-voter-registration-rule/>. That is a substantial change in the law because, previously, voter registrants in those states were permitted to register to vote in federal elections using the Federal Form without supplying such evidence.

H. The EAC's Action Will Cause Immediate and Irreparable Harm

Requiring documentary evidence of citizenship pursuant to the EAC Executive Director's recent actions substantially and illegally burdens the rights of voter registrants in violation of the NVRA, the APA, and the Commission's regulations, and hinders the ability of the Plaintiffs to carry out their mission of promoting voter participation through voter registration drives. See Furtado Declaration ¶ 15; Leonard Declaration ¶ 8. It also forces Plaintiffs in all affected jurisdictions to expend substantial resources to educate the public about the new requirements, when Plaintiffs have already, in the current election cycle and previously, spent significant time and money to educate voters and other organizations that engage in voter outreach about the existing and properly implemented voter registration rules that the Executive Director has unlawfully changed mere weeks or months before the election. See Leonard Declaration ¶ 24; Permaloff Declaration ¶¶ 32-33. Further, it requires several Plaintiffs to divert resources previously used to help voters register to instead assist eligible applicants in securing proper proof-of-citizenship documents in order to exercise their right to vote. See Butler Declaration ¶ 10; Permaloff Declaration ¶ 34. These Plaintiffs have already been required to expend and divert resources in this manner where such requirements have been in effect for registrants who use a

state voter registration form, including in Kansas. *See* Permaloff Declaration ¶ 31. If the Executive Director's decision is allowed to stand, the high costs of educating voters about these new requirements, and of restructuring voter registration efforts to address these requirements would have a significant detrimental impact on all of Plaintiffs' other activities. *See* Furtado Declaration ¶¶ 38-39; Permaloff Declaration ¶¶ 32-34; Gaddy Declaration ¶¶ 16-18; Poythress Declaration ¶¶ 13-21; Leonard Declaration ¶¶ 25-37; Butler Declaration ¶ 11; Johnson Declaration ¶ 11.

Moreover, Plaintiffs concentrate their voter registration drives at locations that reach large numbers of unregistered voters, such as high schools, community colleges, sporting events, naturalization ceremonies, shopping malls or transportation hubs. *See* Furtado Declaration ¶ 7; Permaloff Declaration ¶¶ 14-16; Gaddy Declaration ¶ 5; Poythress Declaration ¶ 9; Slater Declaration ¶ 9. Many otherwise eligible voters would not have the required documents while at these locations or during these times, and may not otherwise register to vote. *See* Gaddy Declaration ¶¶ 9-12; Poythress Declaration ¶ 18; Permaloff Declaration ¶ 25; Slater Declaration ¶¶ 16-17. Other potential voters who do not currently possess qualifying documents, including individual members of several Plaintiffs' organizations, would be faced with the costs and burdens of securing such evidence, often within short time frames given upcoming elections and registration deadlines, or risk being denied their right to vote in federal elections altogether. *See* Permaloff Declaration ¶¶ 27-29; Poythress Declaration ¶¶ 14-15. Even if voter registration applicants did have these documents, many of Plaintiffs' members and other individuals who participate in voter registration drives organized by Plaintiffs would not have the capacity to make copies of them to submit along with the registration forms. *See* Poythress Declaration ¶¶ 17; Permaloff Declaration ¶ 24. Moreover, Plaintiffs' members or those who participate in their

voter registration drives would not feel comfortable handling sensitive citizenship documents such as birth certificates. *See* Furtado Declaration ¶ 17; Permaloff Declaration ¶ 26; Slater Declaration ¶ 18. Further, some potential registrants may decline to register through a drive facilitated by Plaintiffs because they would feel uncomfortable providing such sensitive documents to a person they do not know. *See* Slater Declaration ¶ 20.

Additionally, several Plaintiffs would have to divert resources from helping new voters register to assisting applicants who have already attempted to register to vote but have not provided, or do not have access to, documentary proof of citizenship information, as has already occurred in Kansas. *See* Furtado Declaration ¶ 36; Butler Declaration ¶ 10; Johnson Declaration ¶ 10. Many voters will be confused and uncertain over whether they are eligible to register in light of the close proximity of the Executive Director's decision to upcoming primary elections in these States, likely reducing voter participation.⁵ *See* Poythress Declaration ¶ 21; Permaloff Declaration ¶ 35; Slater Declaration ¶ 8. The modification to the Federal Form's state-specific instructions would thus impede the Plaintiffs' mission of promoting full civic participation in elections, and would impose concrete financial and other costs on the Plaintiffs' organizations and, where applicable, their members in carrying out that mission. *See* Slater Declaration ¶ 17. This poses imminent harm to Plaintiffs' voter registration efforts, and to new voters who will be unable to provide the requested documentation. Each of the individual Plaintiffs have already been prevented from registering to vote because their registration forms were not accompanied by documentary proof of citizenship. *See* Declaration of Marvin L. Brown ¶¶ 7-8; Declaration of

⁵ According to a local Kansas newspaper, "yet another element of confusion and controversy has been injected into the Kansas election system. The courts say people using the federal form don't have to present proof of citizenship, but the head of the EAC says that, if they live in Kansas, they do. . . . [T]he state needs to get these questions resolved in a manner that conforms with federal law and facilitates registration of qualified voters. The current chaos in Kansas registration laws is both a deterrent to voter participation and a disservice to the state." *Editorial: Voting chaos*, Lawrence Journal-World, Feb. 15, 2016, available at <http://www2.ljworld.com/news/2016/feb/15/editorial-voting-chaos/>.

JoAnn Brown ¶¶ 6-7. The Executive Director's unlawful action has harmed Plaintiffs, and will have similar negative impact on myriad otherwise-eligible voters who should not be required to provide proof of citizenship.

The Federal Form has played a substantial role in a number of Plaintiffs' voter registration drives and serves as an important tool for bolstering democratic participation, *see* Furtado Declaration ¶ 35, Gaddy Declaration ¶ 15; Permaloff Declaration ¶¶ 17-18, 30, and a simple backup to potentially cumbersome state voter registration procedures. *See* Slater Declaration ¶ 23. The addition of documentary proof of citizenship requirements to that option makes it significantly harder for citizens to register to vote, especially for those in underrepresented communities. *See* Permaloff Declaration ¶ 29; Slater Declaration ¶ 4, 23. For instance, a 2006 survey sponsored by the Brennan Center for Justice reveals that as many as 13 million American citizens do not have ready access to citizenship documents, and as many as 21 million citizens do not have government-issued photo identification, such as a driver's license. *See* Leonard Declaration ¶ 35; Slater Declaration ¶ 14; *see also* *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>. Under the Executive Director's decision, American citizens eligible to vote will not be permitted to register without providing sufficient proof of citizenship, such as a driver's license. *See* Declaration of Marvin L. Brown ¶¶ 7-8; Declaration of JoAnn Brown ¶¶ 6-7.

Plaintiffs will also have to revise procedures and educational materials to inform, as applicable, community voter registration drives, their own members, and members of the public regarding the new procedures and the means by which eligible citizens without proof of

citizenship may become registered to vote. *See* Leonard Declaration ¶ 24. The EAC's modification to the state-specific instructions would thus harm Plaintiffs' missions to ensure that all eligible voters can register and cast a ballot that counts. *See* Slater Declaration ¶ 3

Voters in all three states are now being informed, via the Federal Form's instructions, that they may not register to vote in upcoming federal elections without documentary proof of citizenship. Kansas and Alabama are already implementing the Executive Director's decision, directly impacting upcoming federal primary elections. Alabama will hold its primary election on March 1, 2016. If a runoff election is needed, it will be held on April 12, 2016, with the deadline to register on March 28, 2016. *See* Permaloff Declaration ¶ 35. Moreover, Kansas will hold its caucuses on March 5, 2016, with registration for one of its political parties available up to and including the day of the caucus. Although the voter registration deadline for Georgia's March 1 presidential preference primary has passed, the April deadline for its general primary is fast approaching. If the Executive Director's decision is allowed to stand, it would significantly hamper Plaintiffs' ability to accomplish their core missions of assisting voters to register. Several Plaintiffs would also be forced to expend substantial resources to educate the public about the new requirements and assist eligible voters to secure proper proof-of-citizenship documents in order to exercise their right to vote. *See* Johnson Declaration ¶¶ 9-10. In the current election cycle, several Plaintiffs have already expended substantial financial and time resources in drafting and circulating voter information materials, which include instructions on how to register to vote. *See* Butler Declaration ¶ 9; Slater Declaration ¶ 27. Updating or replacing these materials would place significant strain on those Plaintiffs' voter education capacity. *See* Gaddy Declaration ¶¶ 16-18; Slater Declaration 25-26. The high costs of educating voters about these new requirements would have a significant detrimental impact on all of their other activities.

II. ARGUMENT

A. Plaintiffs are Entitled to a Temporary Restraining Order and a Preliminary Injunction.

In order to obtain injunctive relief, “a moving party must show: (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction.” *Baumann v. Dist. of Columbia*, 655 F. Supp. 2d 1, 6 (D.D.C. 2009) (citing *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). “Plaintiff’s probability of success on the merits is the most critical of the criteria when considering a motion for preliminary injunction.” *Carey v. FEC*, 791 F. Supp. 2d 121, 128 (D.D.C. 2011). “The same standard applies for both temporary restraining orders and preliminary injunctions.” *Experience Works, Inc. v. Chao*, 267 F. Supp. 2d 93, 96 (D.D.C. 2003); *see also Hall v. Johnson*, 599 F. Supp. 2d 1, 6 n.2 (D.D.C. 2009). Plaintiffs meet all of these standards based on the extraordinary, and what will be undisputed, facts of this case.

Courts regularly restrain agency actions for failure to comply with the APA. *See Clarke v. Office of Fed. Hous. Enter. Oversight*, 355 F. Supp. 2d 56, 63-66 (D.D.C. 2004) (granting preliminary injunction where plaintiff alleged that agency Director’s action exceeded his statutory authority in violation of the APA, and satisfied all four prongs of the test for a preliminary injunction); *Brendsel v. Office of Fed. Hous. Enter. Oversight*, 339 F. Supp. 2d 52, 60 (D.D.C. 2004) (same); *Fund For Animals v. Norton*, 281 F. Supp. 2d 209, 237 (D.D.C. 2003) (granting a preliminary injunction where plaintiff alleged that agency action would violate applicable restrictive statutes, thus violating the APA, and showed likelihood of success on the merits and irreparable harm, while agency failed to show adverse effect to itself or the public

interest); *see also* 5 U.S.C. § 705 (courts may “postpone the effective date of [an agency] action” in order to “prevent irreparable injury”).

Here, a temporary restraining order and preliminary injunction are warranted because Plaintiffs can demonstrate a strong likelihood of success on the merits and will suffer irreparable harm if the Executive Director’s *ultra vires* actions are permitted to interfere with voters’ rights to participate in presidential primaries. There will be no harm to the EAC if a preliminary injunction is issued, which will simply maintain the longstanding policy of the EAC determined through appropriate procedures under the APA and consistent with the NVRA. The public interest plainly weighs in favor of upholding the rights of eligible voters to register without the hindrances that Alabama, Georgia and Kansas seek to subject them to.

B. The Executive Director’s Actions Are Final Agency Action

As an initial matter, the Executive Director’s decision to grant requests made by Alabama, Georgia and Kansas to amend the Federal Form and require documentary proof of citizenship constitutes final agency action. “[T]o be final, agency action must mark the consummation of the agency’s decisionmaking process, and must either determine rights or obligations or occasion legal consequences.” *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 483 (2004) (quotations omitted). There is a “presumption in favor of judicial review of administrative action.” *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 348 (1984). Even if “the agency has not dressed its decision with the conventional procedural accoutrements of finality, its own behavior [could] belie[] the claim that its interpretation is not final.” *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 479 (2001).

Here, the Executive Director’s unilateral action granting the pending requests of Alabama, Georgia and Kansas constitutes final agency action under § 704 of the APA. The policy change enacted by the Executive Director took instant legal effect on the EAC website,

immediately imposing an obligation on Federal Form applicants in Alabama, Georgia and Kansas to provide documentary proof of citizenship. The Executive Director's letters approving the States' requests similarly had immediate effect. Indeed, Alabama has already stated that its Secretary of State will begin implementing the Executive Director's decision, demonstrating that it considers such decision to constitute final agency action. *See Alabama Secretary of State Releases Statement Regarding Voting Citizenship*, Feb. 6, 2016, available at <http://www.sos.alabama.gov/PR/PR.aspx?ID=10291>.

While the Executive Director has suggested to the press that interested parties may seek reconsideration of his decision, the APA expressly provides that "otherwise final" agency action remains subject to judicial review under § 704, "whether or not there has been [a request] for any form of reconsideration [or] for an appeal to superior agency authority." 5 U.S.C. § 704. "[T]he mere possibility that an agency might reconsider in light of 'informal discussion' and invited contentions of inaccuracy does not suffice to make an otherwise final agency action nonfinal." *Sackett v. EPA*, 132 S. Ct. 1367, 1372 (2012) (holding that an EPA compliance order implemented with immediate effect constituted final agency action, despite the agency's invitation to report inaccuracies and informally discuss terms). And despite one lone Commissioner's protest and call for a formal vote by the full Commission, the other two Commissioners have not agreed to hold such a vote. Nor would it matter if they did, because the Federal Form has already been altered and registration deadlines are imminent. The EAC's decision-making process is complete for all intents and purposes.

C. Plaintiffs Have Standing to Challenge the Executive Director's Actions

Most of the plaintiffs here have been parties to lawsuits relating to earlier efforts by States to ignore or alter the Federal Form and plainly have standing. A plaintiff has standing to bring suit where (a) it has suffered a concrete injury that (b) is fairly traceable to the challenged

action and (c) the requested relief will redress the alleged injury. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102-03 (1998).

1. Individual Plaintiffs

The individual plaintiffs plainly have standing to challenge the EAC's actions. Plaintiffs Marvin Brown and JoAnn Brown have been prevented from registering to vote on the Federal Form based on Kansas's documentary proof of citizenship requirement. *See* Declaration of Marvin L. Brown ¶¶ 7-8; Declaration of JoAnn Brown ¶¶ 6-7. This harm is directly traceable to the Executive Director's actions, and deprives them of the ability to register using the Federal Form without obtaining documentary proof of citizenship. Enjoining and vacating the Executive Director's decision would allow the Browns to register using the Federal Form and exercise their right to vote, fully redressing the injury they have suffered. Therefore, plaintiffs Marvin and JoAnn Brown have standing to challenge the Executive Director's actions.

2. Organizational Plaintiffs

"An organization can have standing on its own behalf or on behalf of its members." *Abigail Alliance for Better Access to Devel. Drugs v. Eschenbach*, 469 F.3d 129, 132 (D.C. Cir. 2006) (citations omitted). When an organization sues on its own behalf, it does so based on an injury-in-fact that it has suffered. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982); *see also Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990) ("An organization has standing on its own behalf if it meets the same standing test that applies to individuals."). Thus, the "organization 'must demonstrate that the organization has suffered injury in fact, including such concrete and demonstrable injury to the organization's activities--with [a] consequent drain on the organization's resources--constituting ... more than simply a setback to the organization's abstract social interests.'" *A.N.S.W.E.R. Coal. v. Kempthorne*, 493 F. Supp. 2d 34, 43 (D.D.C. 2005) (alterations in original) (quoting *Nat'l Taxpayers Union, Inc. v.*

United States, 68 F.3d 1428, 1433 (D.C. Cir. 1995)). To determine whether an injury is “concrete and demonstrable,” courts in this Circuit “ask, first, whether the agency’s action ... injured the [organization’s] interest and, second, whether the organization used its resources to counteract that harm.” *People for the Ethical Treatment of Animals v. U.S. Dep’t of Agriculture*, 797 F.3d 1087, 1094 (D.C. Cir. 2015) (second alteration in original). An organization may also sue on behalf of its members “even without a showing of injury to the [organization] itself ... when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *United Food & Commercial Workers Union v. Brown Grp., Inc. (UFCWU)*, 517 U.S. 544, 552-53 (1996) (quoting *Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977)). Here the League, Project Vote, the Georgia State Conference of the NAACP, and the Georgia Coalition for the People’s Agenda (the “Organizational Plaintiffs”) each have standing to challenge the EAC’s actions on their own behalf; the League, the Georgia State Conference of the NAACP, and the Georgia Coalition for the People’s Agenda further have standing on behalf of their members. *See* Butler Declaration ¶ 4; Johnson Declaration ¶¶ 3-6.

As an initial matter, the Organizational Plaintiffs clearly have standing to challenge the EAC’s actions in their own right. As set forth more fully above, the Organizational Plaintiffs’ respective missions are to promote political participation by assisting voters to register, and central to this mission are the Organizational Plaintiffs’ voter registration efforts. *See* Butler Declaration ¶ 6; Johnson Declaration ¶¶ 7-8. For example, the League’s efforts in this regard are among the longest-running and largest nonpartisan voter drives in the nation. *See* Furtado Declaration ¶¶ 4,6; Leonard Declaration ¶ 8. Project Vote provides voter education materials

and in-depth technical assistance to voter registration drives in states across the country, including Georgia. *See* Slater Declaration ¶¶ 7, 27. Even in the absence of the EAC’s challenged action, each of the Organizational Plaintiffs expend substantial time and resources in helping new voters register and educating the public about how to register to vote. *See* Johnson Declaration ¶ 9. The EAC’s eleventh-hour decision to add documentary-proof-of-citizenship requirements to the Federal Form for Alabama, Georgia, and Kansas on the eve of those states’ primary elections and caucuses, however, directly contravenes the Organizational Plaintiffs’ core programmatic concerns and directly and adversely affects their respective missions to increase the number of eligible persons who register to vote and participate in elections, particularly those who are unable to produce documentary proof of citizenship. *See id.* ¶¶ 9-11.

The injuries that the EAC’s actions have and will cause the Organizational Plaintiffs are not speculative, representing a mere specter of the need to expend future resources at some uncertain time in the future. *See Am. Immigration Lawyers Ass’n v. Reno*, 18 F. Supp. 2d 38, 49 (D.D.C. 1998) (“The plaintiffs’ claims that they *may* have to expend or divert resources is simply too speculative to confer Article III standing.”) (citing *Fair Employment Council of Greater Wash., Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994)). Rather, the Organizational Plaintiffs currently engaging voters in the affected states have already incurred and will continue to incur significant expenses as a result of the EAC’s actions. And the injuries that the Organizational Plaintiffs have suffered are not “self-inflicted” ones. *Fair Empl. Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994) (rejecting as grounds for standing expenses plaintiff organization incurred “testing” defendant’s allegedly discriminatory practices); *see also Am. Soc’y for Prevention of Cruelty to Animals v. Feld Entm’t, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (recognizing that “an organization’s diversion of

resources to litigation or to investigation in anticipation of litigation is considered a ‘self-inflicted’ budgetary choice that cannot qualify as an injury in fact for purposes of standing”). To the contrary, the Organizational Plaintiffs have, and will continue to, expend significant resources in educating voters and groups that help voters register on the new documentation requirements that the EAC’s unlawful actions have introduced in Alabama, Georgia, and Kansas. *See* Johnson Declaration ¶¶ 8-11; Slater Declaration ¶ 25. Such expenditures are clearly aimed at counteracting the harm that the EAC’s actions will cause the Organizational Plaintiffs’ respective missions--namely, preventing citizens from registering to vote if they fail to provide the proper documentation of citizenship and preventing voter registration drives from reaching the maximum number of eligible but unregistered citizens. *See PETA*, 797 F.3d at 1094; Slater Declaration ¶¶ 16-22. Thus, the Organizational Plaintiffs fall squarely within the scope of *Havens*-standing in that the EAC’s “illegal action increase[d] the resources the group[s] must devote to programs independent of [their] suit challenging the action.” *Spann*, 899 F.2d at 27.

Additionally, the League has associational standing. The League is a membership organization comprised of individuals committed to promoting political participation in the electoral process. *See* Leonard Declaration ¶ 6. As explained more fully above, the EAC’s action poses direct harm to the League members’ ability to register new voters, particularly those who are unable to produce documentary proof of citizenship. *See* Poythress Declaration ¶¶ 13-15. This harm is directly traceable to the Executive Director’s decision to unilaterally reverse settled EAC policy. Enjoining this decision from taking effect would provide relief to the League and its members by maintaining the voter registration status quo and allowing them to continue registering potential voters with the ease and simplicity of the Federal Form, as was intended by the NVRA. Therefore, the League’s individual members have standing to sue the

Defendants in this action. *See UFCWU*, 517 U.S. at 553. What is more, the injury the League’s individual members have suffered as a result of EAC action--i.e., burdening their ability to register new voters--are interests “germane to the [League’s] purpose.” *See id.* And, finally, the relief the League seeks, “if granted, will inure to the benefit of [its] members ... actually injured” making participation of the individual League members unnecessary. *See Warth v. Seldin*, 422 U.S. 490, 515 (1975).

D. The Executive Director’s Actions Were Arbitrary, Capricious and in Excess of the EAC’s Statutory Authority Under the NVRA and HAVA

1. *The Executive Director Acted Contrary to Law by Unilaterally Changing Longstanding EAC Policy Without the Statutorily Required Approval of Three Commissioners*

The EAC may only act on policy matters through a formal Commission vote in which at least three Commissioners approve, which the Executive Director indisputably failed to obtain here. HAVA unambiguously states: “Any action which the Commission is authorized to carry out under [HAVA] may be carried out only with the approval of at least three of its members.”⁵² U.S.C. § 20928; *see also* Nat’l Voter Registration Act of 1993, 59 Fed. Reg. 11,211 (Mar. 10, 1994); Nat’l Voter Registration Act, 58 Fed. Reg. 51,132 (Sept. 30, 1993). HAVA accordingly expressly requires that the Commission vote on the States’ requests (and then authorize a notice and comment rulemaking if the Commission wants to change the EAC’s longstanding policy).⁶

⁶ While the Tenth Circuit in *Kobach* recognized that the approval of three Commissioners is required to carry out any action authorized under HAVA, *see Kobach*, 772 F.3d at 1193, in *dicta* the Court suggested that because “§ 20928 [of HAVA] explicitly applies only to actions authorized in the same chapter,” the three-vote requirement did not apply to the “[t]he decision at issue in [*Kobach*],” as it “was authorized by 52 U.S.C. § 20508, which was contained in a different chapter of the Code when § 20928 was passed.” *Id.* The court cited the word “chapter” in the U.S. Code, but this was added in codification. *See* 52 U.S.C. § 20928 (References in Text). HAVA itself states, “Any action which the Commission is authorized to carry out under this *Act* may be carried out only with the approval of at least three of its members.” Help America Vote Act of 2002, Pub. L. 107–252, title II, §208, Oct. 29, 2002, 116 Stat. 1678 (emphasis added). HAVA explicitly transferred authority to the EAC to carry out all duties previously delegated to the Federal Election Commission pursuant to §20508(a) of the NVRA, *see* PL 107-252 (52 U.S.C. § 21132), including developing and regulating the Federal Form. *See* 52 U.S.C. § 20929; 52 U.S.C. §§ 20508(a)-(a)(1). The EAC’s three-Commissioner approval requirement is much like the FEC’s four-vote Commissioner

It is undisputed that three Commissioners did not vote to or otherwise approve the Executive Director's change in EAC policy rendering the Executive Director's decision *ultra vires*. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674, 676 (2010) (invalidating actions taken by two members of the National Labor Relations Board ("NLRB") when the statute required a quorum of at least three members to be present). Where there is a full, functioning three-member Commission, there is no valid procedure by which the Executive Director could effect a substantive policy change through unilateral action. The Executive Director's actions therefore were *ultra vires* and must be set aside as contrary to the governing law. 5 U.S.C. § 706(2)(C) ("The reviewing 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 . . .").

2. *The Executive Director Failed to Follow the EAC's Own Internal Procedures and Guidelines*

The Executive Director also lacked the authority under the EAC's own policies and procedures to unilaterally change the EAC's longstanding policy and legal position that documentary proof of citizenship was not "necessary" within the NVRA's meaning. The EAC's own governing documents specify that only the Commissioners could make policy decisions through voting; the Executive Director was only empowered to make *recommendations* with respect to policy matters. See Schmidt Dec. Ex. 6. In addition, the Executive Director also violated EAC policy by engaging in prohibited *ex parte* communications with officials from the States. See Schmidt Dec. Ex. 5; see also *Fort Stewart Schs. v. Fed. Labor Relations Auth.*, 495

requirement (the FEC has six Commissioners), which governed the FEC's adoption and development of the Federal Form prior to HAVA. See 52 U.S.C. §30106(c). It would, therefore, make little sense that when Congress transferred authority over the Federal Form from the FEC to the EAC, that the majority-vote requirement would not apply.

U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide” by its own governing rules and regulations); *VanderMolen v. Stetson*, 571 F.2d 617, 624 (D.C. Cir. 1977) (“It is, of course, a fundamental tenet of our legal system that the Government must follow its own regulations. Actions by an agency of the executive branch in violation of its own regulations are illegal and void.”) (citation omitted).

The Executive Director’s authority does *not* include making or changing EAC policy under the EAC’s own internal rules. Pursuant to the “Election Assistance Commission Organization Management Policy Statement” (the “2015 Policy Statement”), which is currently in effect, “Commissioners shall make and take action in areas of policy,” including “setting rules, guidance or guidelines,” and “makes policy through the formal voting process.” *See* ex 6. By contrast, the Executive Director, “in consultation with the Commissioners,” may only “(1) *prepare* policy recommendations for commissioner approval, (2) *implement* policies *once made*, and (3) take responsibility for administrative matters.” *See id.* (emphasis added). Whether or not to require documentary proof of citizenship is plainly a core policy concern of the Commissioners, as shown by the prior commission-level attention that the EAC has devoted to the subject. And while the Commission previously had delegated authority to the Executive Director to maintain the Federal Form *consistent* with the EAC’s established policies 2008, which the Tenth Circuit upheld in *Kobach*, that prior delegation no longer exists. Just as an agency can delegate certain responsibilities to subordinates, it also can retract a prior delegation of authority, as the Commission did here. *See Black v. Snow*, 272 F. Supp. 2d 21, 26 (D.D.C. 2003). At all events, the Executive Director certainly did not “maintain” the Federal Form consistent with prior EAC policy here by changing that policy.

Further, the EAC's 2006 "Ex Parte Communications Policy" prohibits the Executive Director from engaging in certain *ex parte* communications. *See* Schmidt Dec. Ex. 5. Specifically, "[n]o Commissioner or staff member with decision making authority shall communicate *ex parte* with any prohibited individual regarding a particular matter before the Commission." *Id.* *Ex parte* communications are defined as "off the record and nonpublic communications" while "prohibited individuals" include "any individual representing an entity or industry which is regulated" by the EAC. *Id.* "Particular matters" are "matters over which EAC has decision making authority." *Id.*

Here, according to news reports, the Executive Director admitted to communicating with election officials from the States making these requests regarding amending state-specific instructions to the Federal Form prior to issuing the determination letters on January 29, 2016. In an interview with a media organization, he stated that he had discussions with the Kansas Secretary of State, along with elections officials in Alabama and Georgia. Because the communications were off the record and nonpublic, with individuals representing entities regulated by the EAC, and regarding particular matters before the Commission, they violated the EAC's Ex Parte Communications Policy and irrevocably tainted the decision making process under which the Executive Director promulgated his unilateral change in EAC policy.

An agency's failure to comply with its own internal procedures is a separate and independent ground for concluding the Executive Director's actions were arbitrary, capricious and an abuse of discretion. *See Steenholdt v. FAA*, 314 F.3d 633, 639 (D.C. Cir. 2003) ("explaining that federal agencies are required to follow their own rules, even gratuitous procedural rules that limit otherwise discretionary actions"); *IMS, P.C. v. Alvarez*, 129 F.3d 618, 621 (D.C. Cir. 1997) ("It is a well-settled rule that an agency's failure to follow its own

regulations is fatal to deviant action”) (internal quotation marks omitted); *see also Mazaleski v. Treusdell*, 562 F.2d 701, 717-19 n.38 (D.C. Cir. 1977) (invalidating agency action that was inconsistent with agency personnel manual). Because the Executive Director exceeded the limited scope of authority granted to him by the Commission and violated the agency’s *ex parte* communications policy in implementing his unlawful change to longstanding EAC policy,, the Executive Director’s actions were *ultra vires*.

3. *The EAC Failed to Provide a Formal Notice and Comment Period as Required by the Administrative Procedure Act*

“The Administrative Procedure Act’s general rulemaking section, 5 U.S.C. § 553, sets down certain procedural requirements with which agencies must comply in promulgating legislative rules.” *Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 752 (D.C. Cir. 2001). Specifically, “there must be publication of a notice of proposed rulemaking; opportunity for public comment on the proposal; and publication of a final rule accompanied by a statement of the rule’s basis and purpose.” *Id.*; *see also Chamber of Commerce v. U.S. Dep’t of Labor*, 174 F.3d 206, 211 (D.C. Cir. 1999). Accordingly, “[i]f the agency fails to provide this notice and opportunity to comment . . . , the ‘regulation must fall on procedural grounds, and the substantive validity of the change . . . need not be analyzed.’” *Public Citizen, Inc. v. Mineta*, 427 F. Supp. 2d 7, 14 (D.D.C. 2006) (quoting *AFL-CIO v. Donovan*, 757 F.3d 330, 338 (D.C. Cir. 1985)). An agency may only change a rule or fixed policy using the “same procedures [as the agency] used to issue the rule in the first instance.” *Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1205 (2015); *see also Nat’l Family Planning & Reprod. Health Ass’n, Inc. v. Sullivan*, 979 F.2d 227, 241 (D.C. Cir. 1992) (“[W]hen an agency adopts a new construction of an old rule that repudiates or substantially amends the effect of the previous rule on the public . . . the agency must adhere to the notice and comment requirements of § 553 of the APA.”).

The Federal Form was developed by the FEC in accordance with the goals of the NVRA through official notice and comment rulemaking, and did not require documentary proof from any registrants. *See* Nat'l Voter Registration Act of 1993, 59 Fed. Reg. 11,211 (Mar. 10, 1994); Nat'l Voter Registration Act, 58 Fed. Reg. 51,132 (Sept. 30, 1993). Over the next decade, the EAC consistently rejected all state requests to require documentary proof of citizenship. The Commission, with a full quorum, rejected such a request from Arizona with a 2-2 Commission vote in July 2006. Most recently, in 2014, the EAC's Executive Director considered and rejected earlier requests from all three States, but only after conducting a notice and comment period. *See Kobach*, 772 F.3d at 1188-89 (“After receiving and reviewing 423 public comments, including comments from Arizona, Kansas, and each of the Intervenor-Appellants, the EAC's Executive Director issued a memorandum on January 17, 2014, denominated as final agency action, denying the states' requests.”).

Here, the EAC did not conduct a formal notice and comment proceeding. Nor did the Commission vote on the States' requests before the Executive Director granted them. The EAC's failure to follow its procedures, either by conducting a notice and comment rulemaking or presenting the matter to a vote of the Commission, renders the Executive Director's decision *ultra vires*.

4. *The EAC Did Not Articulate Any Rationale for its Reversal of Policy and Precedent*

An agency's decision to cast off its prior policies and legal decisions must be the product of reasoned decision-making; otherwise, the rule must be invalidated as arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the

first instance.”). Executive agencies are required to explain the bases for their decisions, especially when they change longstanding rules, regulations, and policies. Indeed, “[i]t is axiomatic that an agency choosing to alter its regulatory course must supply a reasoned analysis indicating that its prior policies and standards are being deliberately changed, not casually ignored.” *Action for Children’s Television v. FCC*, 821 F.2d 741, 745 (D.C. Cir. 1987) (quotation omitted); *see also FCC v. Fox Television Stations*, 556 U.S. 502, 535 (2009) (Kennedy, J., concurring in part and concurring in the judgment) (“[A]n agency’s decision to change course may be arbitrary and capricious if the agency sets a new course that reverses an earlier determination but does not provide a reasoned explanation for doing so.”); *Northwest Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687-91 (9th Cir. 2007) (agency departure from a two-decade-old precedent is arbitrary and capricious without reasoned explanation); *see also INS v. Yang*, 519 U.S. 26, 32 (1996). When an agency fails to provide such an explanation for a change in course, its “unexplained departure from prior agency determinations is inherently arbitrary and capricious” and, therefore, must be overturned. *Nat’l Treasury Emps. Union v. Fed. Labor Relations Auth.*, 404 F.3d 454, 457 (D.C. Cir. 2005); *see also Comcast Corp. v. F.C.C.*, 526 F.3d 763, 769 (D.C. Cir. 2008) (“[A]n agency’s unexplained departure from precedent must be overturned as arbitrary and capricious.”).

Here, the Executive Director did not provide *any* explanation for the change in the EAC’s policy, and failed to point to any changed circumstances or new evidence. As the Tenth Circuit previously found, accepting the States’ position without new evidence would “risk[] arbitrariness, because [. . .] [c]hanging course and acceding to their requests absent relevant new facts would conflict with the EAC’s earlier decision.” *Kobach*, 772 F.3d at 1198 (citing *Eagle Broad. Grp., Ltd. v. F.C.C.*, 563 F.3d 543, 550 (D.C. Cir. 2009)). Nevertheless, the Executive

Director still “has offered neither facts nor analysis to the effect” that new evidence warranting departure from EAC precedent. *See Action for Children’s Television*, 821 F.2d at 746. To the contrary, the Executive Director provided no written explanation at all for his “*volte face*,” making his abrupt departure from EAC precedent “intolerably mute.” *Id.* The Executive Director’s “failure to follow [the EAC’s] own well-established precedent without explanation is the very essence of arbitrariness” and his decision therefore must be set aside. *Nat’l Treasury Emps. Union*, 404 F.3d at 457; *see also Comcast Corp.*, 526 F.3d at 769.

5. *The EAC’s Decision Exceeds Its Statutory Authority Under the NVRA*

By adding a substantive requirement not set forth in the NVRA without giving adequate weight to the clear and manifest intent of Congress, the Executive Director exceeded the EAC’s statutory authority under the NVRA. The NVRA prescribes the Federal Form’s specific content and requirements. Specifically, the form “may require only such identifying information . . . as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1) (emphasis added). The form “may not include any requirement for notarization or other formal authentication.” 52 U.S.C. 20508(b)(3). The Federal Form must, however, “include a statement that . . . specifies each eligibility requirement (including citizenship); “contain[] an attestation that the applicant meets each such requirement”; and “require[] the signature of the applicant, under penalty of perjury.” 52 U.S.C. § 20508(b)(2). Additionally, pursuant to HAVA, the Federal Form must include two specific questions and check boxes for the applicant to indicate whether he meets the U.S. citizenship and age requirements to vote. 52 U.S.C. § 21083(b)(4)(A).

To determine the scope of statutory authority, courts must always “begin with the statute.” *See Am. Fed. of Gov’t Emps. v. Shinseki*, 709 F.3d 29, 33 (D.C. Cir. 2013). And “[f]ew

principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded in favor of other language.” *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987) (citations omitted). Importantly, when Congress passed the NVRA, it considered but ultimately rejected language allowing states to require “presentation of documentary evidence of the citizenship of an applicant for voter registration.” See H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.). The conference committee rejected this provision, determining that such a requirement was “*not necessary or consistent* with the purposes of this Act,” could “permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act,” and “could also adversely affect the administration of the other registration programs” *Id.* (emphasis added). “An agency action is arbitrary, capricious, or an abuse of discretion when it . . . irrationally departs from an agency's governing policy, or frustrate[s] the policy that Congress sought to implement.” *Beaty v. Food & Drug Admin.*, 853 F. Supp. 2d 30, 41 (D.D.C. 2012) *aff'd in part, vacated in part sub nom. Cook v. Food & Drug Admin.*, 733 F.3d 1 (D.C. Cir. 2013) (internal citations and quotation marks omitted). As the EAC previously acknowledged, “Congress’s rejection of the very requirement that . . . Georgia[] and Kansas seek here is a significant factor the EAC must take into account in deciding whether to grant the States’ requests.” EAC-2013-0004 at *20-21 (citing *Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006) (“Congress’ rejection of the very language that would have achieved the result the [States] urge[] here weighs heavily against the [States’] interpretation.”)).

Here, by adding substantive requirements above and beyond those specific requirements Congress deemed necessary to be included in the Federal Form without giving sufficient weight to the plain legislative intent or making any determination of necessity, the Executive Director

exceeded the EAC's statutory authority unambiguously set forth in the NVRA, and exercised his purported authority in a manner "the statute simply cannot bear," *see Aid Ass'n for Lutherans v. U.S. Postal Serv.*, 321 F.3d 1166, 1178 (D.C. Cir. 2003), and courts must set aside agency actions that are "in excess of statutory ... authority" 5 U.S.C. § 706(2)(C).

E. The Organizational Plaintiffs, the Individual Plaintiffs and Other Potential Voters Will Face Irreparable Harm in the Absence of a TRO and Preliminary Injunction

"Irreparable injury" must be "both certain and great; it must be actual and not theoretical." *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)). The moving party must show a "clear and present need for equitable relief," that is "beyond remediation." *Nat'l Ass'n of Mortg. Brokers v. Bd. of Governors of Fed. Reserve Sys.*, 773 F. Supp. 2d 151, 179-80 (D.D.C. 2011).

Here, Plaintiffs will suffer actual damage without a temporary restraining order and preliminary injunction. Enforcement and implementation of the Executive Director's decision will destroy the long-standing status quo and interfere with Plaintiffs' mission to help marginalized communities in the voter registration process, and will thereby cause irreparable harm. In addition to funding and managing registration drives, several of the Organizational Plaintiffs are membership organizations that represent prospective voters, many of whom would find it unduly burdensome, if not impossible, to register to vote if required to produce documentary evidence of citizenship with the Federal Form. For example, Kansas has placed tens of thousands of voter registration applications in "suspense" for failing to supply documentary proof of citizenship. *See Furtado Declaration* ¶ 34.

The irreparable harm threatened by the EAC's action is imminent. Changing the Federal Form's requirements at this time will be particularly damaging because registration is ongoing

for presidential primary elections and federal congressional elections in both Alabama and Kansas. *See* Furtado Declaration ¶ 41; Permaloff ¶ 34. Alabama, which is already beginning to implement the Executive Director's decision, will hold its primary election on March 1, 2016, with the deadline for registration having just passed on February 15, 2016. Kansas is enforcing the decision as well, and its caucuses will be held on March 5, 2016, with registration for one of its political parties available up to and including the day of the caucus for one political party. While Georgia's registration deadline for the March 1 presidential primary has passed, the Organizational Plaintiffs will also be helping voters register for the November general elections, with planning and program development already in progress. *See* Slater Declaration ¶ 7. Enforcement of the Executive Director's decision will deprive the League and other voter registration organizations of the ability to help register eligible citizens, including those who lack the States' prescribed documents. *See* Furtado Declaration ¶ 37; Permaloff Declaration ¶ 22. Applying documentary proof of citizenship requirements as approved by the Executive Director will make it difficult or impossible for the Organizational Plaintiffs to conduct effective registration drives in those states, and, even when drives are possible, they will have to expend significantly more effort on less effective ways of helping citizens register. *See* Leonard Declaration ¶ 24; Johnson Declaration ¶¶ 9-11; Butler ¶¶ 9-11. These burdens will fall heavily on members of communities that are already underrepresented at the polls, including young people, minorities and the poor—the very communities that the Organizational Plaintiffs target with their registration drives. *See* Slater Declaration ¶ 5; Gaddy Declaration ¶ 11; Poythress Declaration ¶ 15. Moreover, the state-based Organizational Plaintiffs will be forced to divert efforts considerably from collecting and delivering new registration applications to assisting

citizens who have already attempted to vote but need help in obtaining and submitting citizenship documents, as has already been the case in Kansas. *See* Furtado Declaration ¶ 36.

Finally, no form of remediation will be sufficient to address the imminent harm to the Organizational Plaintiffs and, where applicable, their members. Even corrective relief administered at a later date will do nothing to remedy the missed opportunity to register thousands of otherwise-eligible voters in time for their participation in the presidential primaries. Only injunctive relief at this crucial juncture will adequately protect Plaintiffs' work and the multitudes of rightful voters who will be impacted by the EAC's unlawful action.

The individual plaintiffs, who sought to register using the Federal Form but were blocked from registering solely due to the fact that their registration forms were not accompanied by documentary proof of citizenship, also face the prospect of irreparable harm in the form of denial of their voting rights. *See* Declaration of Marvin L. Brown ¶¶ 7-8; Declaration of JoAnn Brown ¶¶ 6-7. "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). *See also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) ("[T]he right to vote is a precious and fundamental right"). If individual Plaintiffs are denied their right to vote in upcoming Kansas elections such as the March 5 primary, the August Kansas state primary elections, or the November general election, there will be no sufficient remedy after the fact.

F. There is No Possibility of Harm to Defendants if Relief is Granted

In order to sustain a motion for temporary injunctive relief, a moving party must show that the injunction would “not substantially injure other interested parties.” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297. When agency action is involved, the Court should balance the actual irreparable harm to the plaintiff and the potential harm to the government. *See Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 429 (2006). In this case it is clear that the EAC and the Executive Director will suffer no cognizable injury if enjoined from enforcing their unauthorized letters to the States. If this court provides the injunctive relief requested, the EAC and the Executive Director will merely be returned to the policy environment that the agency, with good reason, determined was required by the NVRA for the past twenty years. *See, e.g., Texas Children’s Hosp. v. Burwell*, 76 F. Supp. 3d 224, 245 (D.D.C. 2014). Defendants thus will not be harmed by injunctive relief, and will simply be required to do what is part and parcel with their agency’s mission: to further the NVRA’s purpose of helping, rather than hindering, voter registration.

G. There is a Strong Public Interest in Granting Plaintiffs’ Motion

Finally, in considering whether to grant temporary injunctive relief, the Court must consider whether “the public interest would be furthered by the injunction.” *Baumann*, 655 F. Supp. 2d at 6. The public interest is undoubtedly served by maintaining the EAC’s long-term implementation of the NVRA. Denying Plaintiffs’ request for injunctive relief would upend two decades of agency policy, frustrate a central purpose of the NVRA, harm U.S. citizens residing in Alabama, Georgia and Kansas who lack the documentation the States demand, and harm the election process more generally.

In enacting the NVRA, Congress explicitly sought “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” 52

U.S.C. § 20501(b)(1). Immediate enforcement of the Executive Director’s decision would alter a status quo that has governed voter registration in federal elections for over twenty years and frustrate the public’s compelling interest in a simple, straightforward voter registration process just weeks before presidential primary elections and months before other federal primary and general elections. As the Supreme Court warned, giving States *carte blanche* to add all of their state-specific requirements to the Federal Form would result in “the Federal Form ceas[ing] to perform any meaningful function,” and becoming “a feeble means of ‘increas[ing] the number of eligible citizens who register to vote in elections for Federal office.’” 133 S. Ct. at 2256 (quoting 52 U.S.C. § 20501(b)). Therefore, there is a strong public interest in granting temporary injunctive relief.

Finally, the public interest especially favors injunctive relief given the last-minute nature of the Executive Director’s imposition of new restrictions on voter registration, which come on the eve of elections in all three affected States. Voters have been using the Federal Form to register without having to comply with a documentary proof of citizenship requirement for over two decades, but the Executive Director’s sudden unilateral changes to the Federal Form – implemented without public notice – ratchet up the requirements for registering to vote at the last-minute, mere weeks before primary elections and a presidential caucus in the affected states. Imposing such eleventh-hour restrictions on voting risks voter and election official confusion and is contrary to the public interest. *See Frank v. Walker*, 135 S. Ct. 7 (2014); *see also id.* (Alito, J., dissenting) (indicating that the Supreme Court’s order vacating stay and leaving in place an injunction against Wisconsin’s voter ID law was based on “the proximity of the upcoming general election”); *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). Given the impending elections, and the likelihood of eligible voters missing their rightful opportunity to participate due to the

unlawful burdens enacted by the Executive Director, temporary injunctive relief is appropriate to restore the status quo.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for a temporary restraining order and preliminary injunction.

February 17, 2016

Respectfully submitted,

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**Pro hac vice motion pending*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES, LEAGUE OF
WOMEN VOTERS OF ALABAMA, LEAGUE
OF WOMEN VOTERS OF GEORGIA,
LEAGUE OF WOMEN VOTERS OF KANSAS,
GEORGIA STATE CONFERENCE OF THE
NAACP, GEORGIA COALITION FOR THE
PEOPLE'S AGENDA, MARVIN BROWN, JOANN
BROWN, and PROJECT VOTE

Plaintiffs,

vs.

BRIAN D. NEWBY, in his capacity as the Executive
Director of The United States Election Assistance
Commission; and

THE UNITED STATES ELECTION ASSISTANCE
COMMISSION

Defendants.

Case No. 16-cv-236 (RJL)

**AFFIRMATION OF AMELIA SCHMIDT IN SUPPORT
OF THE PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

AMELIA SCHMIDT, an attorney admitted to practice before this Court, affirms the following to be true under the penalties of perjury:

1. I am a member of the firm of Stroock & Stroock & Lavan LLP, counsel for Plaintiffs the League of Women Voters of the United States, the League of Women Voters of Alabama, the League of Women Voters of Georgia, and the League of Women Voters of Kansas

in the above-captioned matter. I submit this affirmation in support of the plaintiffs' motion for a temporary restraining order and preliminary injunction in the above-captioned matter.

2. Annexed hereto as Exhibit 1 is a true and correct copy of the federal national voter registration mail-in form as last updated on May 7, 2010.

3. Annexed hereto as Exhibit 2 is a true and correct copy of the certification of the vote of the Commissioners of the Election Assistance Commission in the matter of Arizona Request for Accommodation, dated July 31, 2006.

4. Annexed hereto as Exhibit 3 is a true and correct copy of the position statement of Commissioner Ray Martinez III issued in the matter of Arizona's Request for Accommodation, dated July 10, 2006.

5. Annexed hereto as Exhibit 4 is a true and correct copy of the Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form (Docket No. EAC-2013-0004), dated January 17, 2014.

6. Annexed hereto as Exhibit 5 is a true and correct copy of "EAC Ex Parte Communications Policy," dated May 25, 2006.

7. Annexed hereto as Exhibit 6 is a true and correct copy of "Election Assistance Commission Organizational Management Policy Statement," effective February 24, 2015.

8. Annexed hereto as Exhibit 7 are true and correct copies of Brian D. Newby's testimony before the Kansas House Elections Committee regarding HB2067, dated January 31, 2011; and testimony before the Kansas House Elections Committee regarding HB 2437, dated February 1, 2012, in his capacity as Election Commissioner of the Johnson County Election Office.

9. Annexed hereto as Exhibit 8 is a true and correct copy of “Comments Related to EAC-2013-0004” issued by Brian D. Newby, in his capacity as Election Commissioner of the Johnson County Election Office, dated January 3, 2014.

10. Annexed hereto as Exhibit 9 is a true and correct copy of a letter from Bryan Caskey, in his capacity as Election Director for the Kansas Secretary of State’s Office, to Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, dated November 18, 2015.

11. Annexed hereto as Exhibit 10 is a true and correct copy of a letter from Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, to Bryan Caskey, in his capacity as Election Director for the Kansas Secretary of State’s Office, dated November 19, 2015.

12. Annexed hereto as Exhibit 11 is a true and correct copy of a letter from counsel for the League of Women Voters of the United States, the League of Women Voters of Kansas, and the League of Women Voters of Arizona to Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, dated December 21, 2015.

13. Annexed hereto as Exhibit 12 is a true and correct copy of a letter from Brian Mellor, in his capacity as General Counsel for Project Vote, to Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, dated December 24, 2015.

14. Annexed hereto as Exhibit 13 is a true and correct copy of a letter from Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, to Bryan Caskey, in his capacity as Election Director for the Kansas Secretary of State’s Office, dated January 29, 2016.

15. Annexed hereto as Exhibit 14 is a true and correct copy of the federal national voter registration mail-in form updated February 1, 2016.

16. Annexed hereto as Exhibit 15 is a true and correct copy of a letter from Jim Bennett, in his capacity as Secretary of State for Alabama, to the commissioners of the U.S. Election Commission, dated December 22, 2014.

17. Annexed hereto as Exhibit 16 is a true and correct copy of a letter from Brian P. Kemp, in his capacity as Secretary of State for Georgia, to Alice Miller, in her capacity as Acting Executive Director of the Election Assistance Commission, dated August 1, 2013.

18. Annexed hereto as Exhibit 17 is a true and correct copy of a letter from Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, to John Merrill, in his capacity as Secretary of State for Alabama, dated January 29, 2016.

19. Annexed hereto as Exhibit 18 is a true and correct copy of a letter from Brian Newby, in his capacity as Executive Director of the U.S. Election Assistance Commission, to Brian Kemp, in his capacity as Secretary of State for Georgia, dated January 29, 2016.

February 17, 2016

Respectfully submitted,

By: Amelia J. Schmidt

Amelia J. Schmidt

D.C. Bar No. 1012380

STROOCK & STROOCK &

LAVAN LLP

1875 K Street NW

Washington, DC 20006

(202) 739-2800

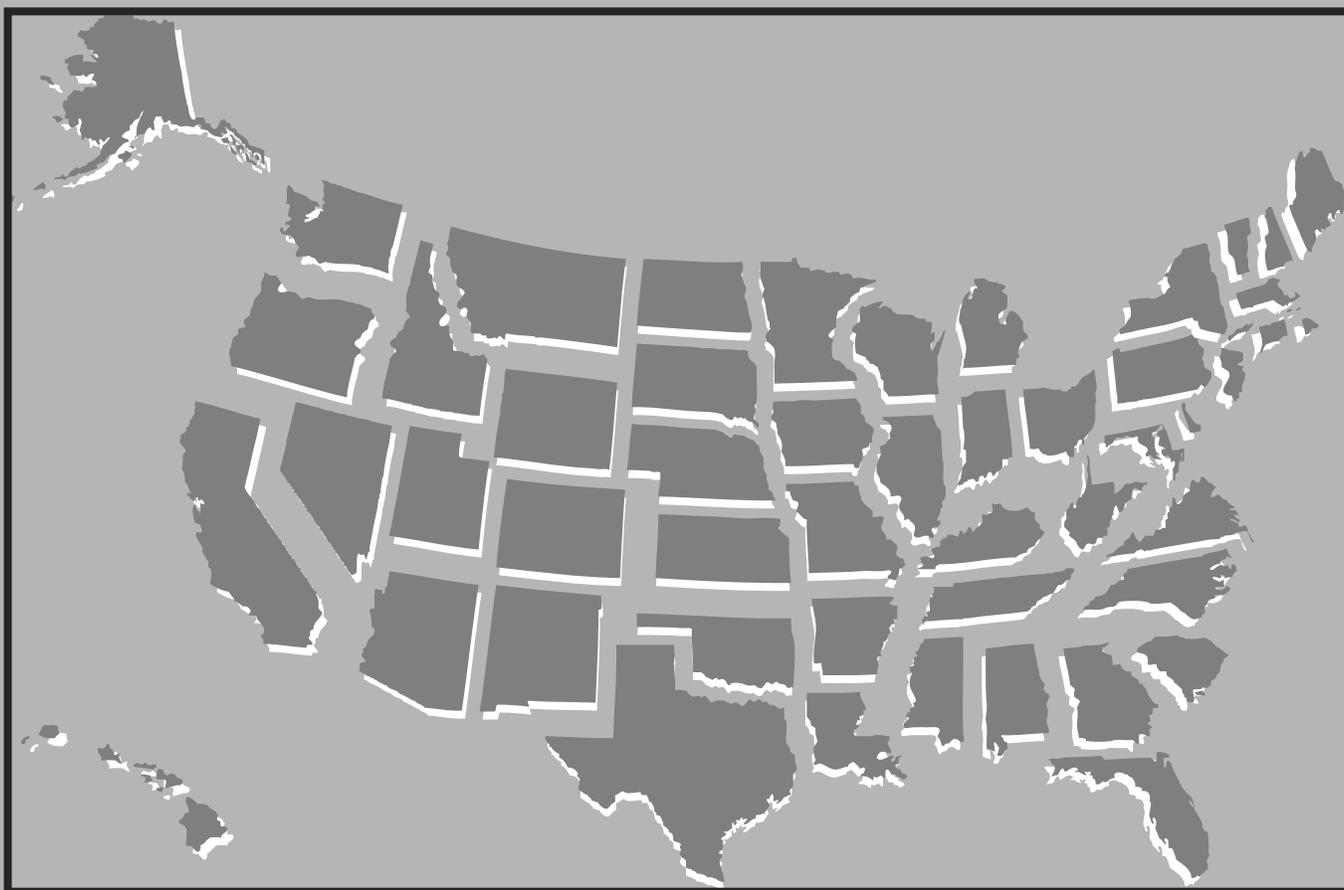
aschmidt@stroock.com

Counsel for Plaintiffs the League of Women Voters of the United States, the League of Women Voters of Kansas, the League of Women Voters of Alabama, and the League of Women Voters of Georgia

EXHIBIT

1

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.

Are you a citizen of the United States of America? Will you be 18 years old on or before election day? If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)	This space for office use only.
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1		Last Name	First Name	Middle Name(s)
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2	Home Address	Apt. or Lot #	City/Town	State	Zip Code
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3	Address Where You Get Your Mail If Different From Above	City/Town	State	Zip Code
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4	Date of Birth	5	Telephone Number (optional)	6
	_____ Month Day Year			ID Number - (See item 6 in the instructions for your state)

7	Choice of Party <small>(see item 7 in the instructions for your State)</small>	8	Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>	
----------	---	----------	--	--

9	I have reviewed my state's instructions and I swear/affirm that: ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ 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.	<div style="border: 1px solid black; height: 40px; width: 100%;"></div> Please sign full name (or put mark) ▲						
		Date: <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center;">/</td> <td style="width: 20%; text-align: center;">/</td> <td style="width: 60%;"></td> </tr> <tr> <td style="text-align: center;">Month</td> <td style="text-align: center;">Day</td> <td style="text-align: center;">Year</td> </tr> </table>	/	/		Month	Day	Year
/	/							
Month	Day	Year						

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?

A	Last Name	First Name	Middle Name(s)	
----------	-----------	------------	----------------	--

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	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
----------	----------------------------------	---------------	------------------	-------	----------

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.

C	<ul style="list-style-type: none"> ■ Write in the names of the crossroads (or streets) nearest to where you live. ■ Draw an X to show where you live. ■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark. 	NORTH ↑									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px;">Example</td> <td style="width: 5%; text-align: center; vertical-align: middle;">Route #2</td> <td style="width: 75%; padding: 5px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">● Grocery Store</td> <td style="width: 50%;"></td> </tr> <tr> <td style="text-align: center;">Woodchuck Road</td> <td></td> </tr> <tr> <td style="text-align: center;">Public School ●</td> <td style="text-align: right; vertical-align: bottom;">X</td> </tr> </table> </td> </tr> </table>	Example	Route #2	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">● Grocery Store</td> <td style="width: 50%;"></td> </tr> <tr> <td style="text-align: center;">Woodchuck Road</td> <td></td> </tr> <tr> <td style="text-align: center;">Public School ●</td> <td style="text-align: right; vertical-align: bottom;">X</td> </tr> </table>	● Grocery Store		Woodchuck Road		Public School ●	X	
Example	Route #2	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">● Grocery Store</td> <td style="width: 50%;"></td> </tr> <tr> <td style="text-align: center;">Woodchuck Road</td> <td></td> </tr> <tr> <td style="text-align: center;">Public School ●</td> <td style="text-align: right; vertical-align: bottom;">X</td> </tr> </table>	● Grocery Store		Woodchuck Road		Public School ●	X			
● Grocery Store											
Woodchuck Road											
Public School ●	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).

D	
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Mail this application to the address provided for your State.

FOR OFFICIAL USE ONLY

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

FIRST CLASS
STAMP
NECESSARY
FOR
MAILING



Print Application

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 If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)		This space for office use only.				
1	(Circle one) Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV	
2	Home Address		Apt. or Lot #	City/Town	State	Zip Code
3	Address Where You Get Your Mail If Different From Above			City/Town	State	Zip Code
4	Date of Birth Month Day Year	5	Telephone Number (optional)	6 ID Number - (See item 6 in the instructions for your state)		
7	Choice of Party (see item 7 in the instructions for your State)	8	Race or Ethnic Group (see item 8 in the instructions for your State)			
9	I have reviewed my state's instructions and I swear/affirm that: ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ 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.			_____ Please sign full name (or put mark) ▲ Date: _____ Month Day Year		

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?

A	Mr. Mrs. Miss Ms.	Last Name	First Name	Middle Name(s)	(Circle one) Jr Sr II III IV
----------	-------------------	-----------	------------	----------------	---------------------------------

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	Street (or route and box number)	Apt. or Lot #	City/Town/County	State	Zip Code
----------	----------------------------------	---------------	------------------	-------	----------

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.

C	■ Write in the names of the crossroads (or streets) nearest to where you live. ■ Draw an X to show where you live. ■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.		NORTH ↑
	Example _____ _____ Public School ●	Route #2 ● Grocery Store Woodchuck Road _____ 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).

D	
----------	--

Mail this application to the address provided for your State.

FOR OFFICIAL USE ONLY

_____	_____
_____	_____
_____	_____
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FIRST CLASS
STAMP
NECESSARY
FOR
MAILING



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.ss.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: 03-28-2008

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:

Commissioner of Elections
111 S. West St., Suite 10
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: 09-12-2006

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.

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 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 17)
- not now be adjudicated mentally incapacitated with respect to voting in Florida or any other State
- not have been convicted of a felony without your civil rights having been restored pursuant to law
- not claim the right to vote in another county or state
- 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 I am a citizen of the United States and a legal resident of Florida"

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: 03-01-2006

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
1020 S. Spring Street
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: <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: 03-01-2006

Registration Deadline — 30 days before the election.

6. ID Number. You must provide your Louisiana driver's license 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. 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.
- 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: 03-01-2006

Registration Deadline — Delivered 10 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.

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

State Instructions

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 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

State Instructions

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

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.

State Instructions

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:

- isang mamamayan ng Estados Unidos
- 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
- 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

State Instructions

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.

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 <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.

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

State Instructions

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

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.

State Instructions

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: 11-10-2010

Registration Deadline — Delivered 29 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:

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

Washington

Updated: 10-29-2003

Registration Deadline — 30 days before the election (or delivered in-person to the local voter registration office 15 days before the election).

6. ID Number. You must provide your driver's license number. If you do not have a Washington driver's license, 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
Voter Registration by Mail
P.O. Box 40230
Olympia, WA 98504-0230

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

- 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.

EXHIBIT

2



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 S. 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 Sherrick

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. Coliver*
E. Coliver 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

*PH (DeAnna Smith signing
for Chairman DeGregorio)*

SUBJECT: Arizona's Request for Accommodation

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.¹ 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

¹ 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.

EXHIBIT

3



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.¹ 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.² 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

¹ See, *Letter from Thomas Wilkey to Arizona Secretary of State*, dated March 6, 2006.

² 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 1993,³ 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,⁴ 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,⁵ 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

³ See, *Statement of Policy Regarding National Mail Voter Registration Form*, Election Assistance Commission, August 10, 2004, at http://www.eac.gov/statements_resolutions.htm.

⁴ See, EAC Tally Vote "Procedures for Voting by Circulation," certified by a vote of 4-0 on May 4, 2004.

⁵ *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.⁶ 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.⁷ 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,

⁶ See, *Letter from Secretary Jan Brewer to Chairman DeGregorio*, dated March 13, 2006.

⁷ 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.”⁸ (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.⁹ 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

⁸ See, Letter from Gavin Gilmour, Associate General Counsel, to Dawn Roberts, Director of the Division of Elections, July 26, 2005.

⁹ 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 HAVA¹⁰ 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 voting¹¹ 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

¹⁰ See 42 U.S.C. § 15501; 42 U.S.C. § 15502.

¹¹ 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, slightly slanted style. The "III" is written as three distinct vertical strokes.

COMMISSIONER RAY MARTINEZ III

July 10, 2006

EXHIBIT

4



U. S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

**MEMORANDUM OF DECISION CONCERNING STATE REQUESTS TO
INCLUDE ADDITIONAL PROOF-OF-CITIZENSHIP INSTRUCTIONS
ON THE NATIONAL MAIL VOTER REGISTRATION FORM
(DOCKET NO. EAC-2013-0004)**

The United States Election Assistance Commission (hereinafter “EAC” or “Commission”) issues the following decision with respect to the requests of Arizona, Georgia, and Kansas (hereinafter, collectively, “States”) to modify the state-specific instructions on the National Mail Voter Registration Form (“Federal Form”). Specifically, the States request that the EAC include in the applicable state-specific instructions on the Federal Form a requirement that, as a precondition to registering to vote in federal elections in those states, applicants must provide additional proof of their United States citizenship beyond that currently required by the Federal Form. For the reasons set forth herein, we deny the States’ requests.¹

I. INTRODUCTION

A. State Requests

1. Arizona

In 2004, Arizona voters approved ballot Proposition 200 amending Arizona’s election laws, as relevant here, by requiring voter registration applicants to furnish proof of U.S. citizenship beyond the attestation requirement of the Federal Form. Ariz. Rev. Stat. Ann. § 16-

¹ As explained below, this decision follows a court order in *Kobach v. EAC*, No. 5:13-cv-4095 (D. Kan. Dec. 13, 2013) remanding the matter to the agency and a subsequent request for public comment. The undersigned Acting Executive Director has determined that the authority exists to act on the requests and therefore issues this decision on behalf of the agency.

166(F). According to the state law, a county recorder must “reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship.” *Id.*

On March 6, 2006, the Commission, acting through its Executive Director, denied Arizona’s original 2005 request to include additional proof of citizenship instructions on the Federal Form, finding, *inter alia*, that the form already required applicants to attest to their citizenship under penalty of perjury and to complete a mandatory checkbox indicating that they are citizens of the United States. EAC000002-04. Further, the Commission observed that Congress itself had found that a documentary proof-of-citizenship requirement was “not necessary or consistent with the purposes of” the National Voter Registration Act (“NVRA”). *Id.*

In July 2006, after receiving several letters of protest from Arizona’s Secretary of State, the EAC’s then-chairman requested that the EAC commissioners accommodate the State by reconsidering the agency’s final decision and granting Arizona’s request. EAC000007-08, EAC00000011, EAC00000013-14. On July 11, 2006, the EAC commissioners denied the chairman’s motion for an accommodation by a tie vote of 2-2. EAC000010.²

Subsequently, Arizona refused to register Federal Form applicants who did not provide the documentation required by Proposition 200. Private parties filed suit against Arizona, challenging Arizona’s compliance with the NVRA. In June 2013, the Supreme Court ruled that the NVRA preempts inconsistent state law and states must accept and use the Federal Form to register voters for federal elections without requiring any additional information not requested on the Form. *Arizona v. Inter Tribal Council of Arizona, Inc.*, ___ U.S. ___, 133 S. Ct. 2247, 2253-60 (2013) (hereinafter “*Inter Tribal Council*”). The Court further stated, “Arizona may, however,

² Arizona did not seek to challenge the EAC’s final decision on the 2006 request under the APA, and the time for doing so has now expired. *See* 28 U.S.C. § 2401(a).

request anew that the EAC include such a requirement among the Federal Form's state-specific instructions, and may seek judicial review of the EAC's decision under the Administrative Procedure Act." *Id.* at 2260.

On June 19, 2013, Arizona's Secretary of State again requested that the EAC include state-specific instructions on the Federal Form relating to Arizona's proof-of-citizenship requirements. On July 26, 2013, Arizona's Attorney General submitted a follow-up letter in support of the state's request. EAC000034-35; EAC000044-46. In a letter dated August 13, 2013, the Commission informed Arizona that its request would be deferred until the reestablishment of a quorum of EAC commissioners, in accordance with the November 9, 2011, internal operating procedure issued by the EAC's then-Executive Director, Thomas Wilkey ("Wilkey Memorandum"). EAC000048. That memorandum set forth internal procedures for processing state requests to modify the state-specific instructions on the Federal Form, instructing that "[r]equests that raise issues of broad policy concern to more than one State . . . be deferred until the re-establishment of a quorum [of EAC commissioners]." EAC000049-50.

2. Georgia

By letter dated August 1, 2013, Georgia's Secretary of State requested, *inter alia*, that the EAC revise the Georgia state-specific instructions of the Federal Form due to a 2009 Georgia law that requires voter registration applicants to provide "satisfactory evidence of United States citizenship so that the board of registrars can determine the applicant's eligibility." EAC001856-57; Ga. Code Ann. § 21-2-216(g). The Commission responded to Georgia's request on August 15, 2013, by informing the state that its request would be deferred in accordance with the Wilkey Memorandum. EAC001859-60.

3. Kansas

On August 9, 2012, Kansas's Election Director requested, *inter alia*, that the EAC provide an instruction on the Federal Form that "[a]n applicant must provide qualifying evidence of U.S. citizenship prior to the first election day after applying to register to vote." EAC000099; Kan. Stat. Ann. § 25-2309(I). The EAC responded to the state by letter dated October 11, 2012, indicating that a decision on Kansas's request regarding proof of citizenship would be deferred in accordance with the Wilkey Memorandum. EAC000101-02.

On June 18, 2013, after the Supreme Court decision in *Inter Tribal Council*, Kansas Secretary of State Kris Kobach renewed the state's August 9, 2012, request to provide an instruction on the Federal Form regarding the state's proof of citizenship requirements. EAC000103. In a follow-up August 2, 2013 letter, Mr. Kobach clarified that he had instructed county election officials to accept the Federal Form without proof of citizenship, but that those registrants would be eligible to vote only in federal elections. EAC000112-13. The EAC again deferred Kansas's request in accordance with the Wilkey Memorandum. EAC000116-17.

Kansas and Arizona subsequently filed suit against the EAC in the United States District Court for the District of Kansas, challenging the EAC's deferral of these requests. *See Kobach v. EAC*, No. 5:13-cv-4095 (D. Kan. filed Aug. 21, 2013). On December 13, 2013, the district court remanded the Kansas and Arizona matters to the EAC with instructions to render a final agency action by January 17, 2014.³ The Georgia request is not part of this pending federal

³ Although the EAC's Executive Director had been delegated the authority to act for the Commission in responding to the States' requests, the current Acting Executive Director initially followed her predecessor's internal operating procedure (i.e., the Wilkey Memorandum), which stated that such requests should be deferred until there was a quorum of commissioners available to provide additional policy guidance. The Acting Executive Director believed that deferring the requests in accordance with the Wilkey Memorandum was the prudent course, and in the pending litigation the Commission argued that the district court should give deference to her decision. The district court determined that the Commission had unreasonably delayed in deciding Arizona's and Kansas's requests and therefore directed the Commission to take final action on those requests by January 17, 2014.

court litigation; however, as it presents similar issues, the Commission proceeds to take final action on that request as well.

B. Summary of Public Comments

On December 19, 2013, the EAC issued a Notice and Request for Public Comment (“Notice”) on the Arizona, Georgia, and Kansas requests. EAC210-11; 78 Fed. Reg. 77666 (Dec. 24, 2013). The Commission also emailed its public comment request to its list of NVRA stakeholders and published the Notice on its website. In response to its request, the Commission received 423 public comments: one on behalf of the Arizona Secretary of State, one from the Kansas Secretary of State, twenty-two from public officials at thirteen different agencies at various levels of government, 385 from individual citizens, four from the groups of individuals and advocacy organizations that intervened in the pending lawsuit, and ten from other advocacy groups.⁴ Neither the Georgia Secretary of State nor any other Georgia state official submitted comments.

1. Arizona submission

The Office of the Solicitor General for the State of Arizona submitted Arizona’s comments in support of its request to add Arizona’s documentary proof of citizenship requirements to its state-specific instructions on the Federal Form. EAC001700-02. Arizona included in its submission: Proposition 200, the initiative passed by the Arizona electorate establishing the voter registration citizenship requirements at issue here, EAC001626-30; the 2004 official canvassing showing the percentage of the electorate that voted in favor of Proposition 200, EAC001632-49; and the district court’s findings of fact and conclusions of law

⁴ The above count excludes one comment which was a prank and three sets of supporting documents that were uploaded as separate comments. Thus, the website through which the public commenting process is managed shows a total of 427 comments received. See <http://www.regulations.gov/#!documentDetail;D=EAC-2013-0004-0001>.

in *Gonzales v. State of Arizona*, Civ. Action No. 06-128 (D. Ariz. Aug. 20, 2008) (ECF No. 1041) (district court case culminating in *Arizona v. ITCA*), denying a permanent injunction against the enforcement of Arizona's documentary proof of citizenship requirements, EAC001651-99. Arizona also submitted declarations of various Arizona state and county officials purporting to demonstrate the undue burden that would result from the maintenance of a dual voter registration system (i.e., maintaining separate voter registration lists for federal elections and state elections), which Arizona argues would be required by Arizona law if the EAC does not accede to Arizona's request, and instances in which the Arizona officials indicate they determined that non-citizens had registered to vote, or actually had voted. EAC001703-48. Finally, Arizona submitted documents showing that the Department of Defense Federal Voting Assistance Program granted Arizona's request to add Arizona's documentary proof of citizenship requirements to the Federal Post Card Application, a voter registration and absentee ballot application created under the Uniformed and Overseas Citizens Absentee Voting Act. EAC001749-1802.

2. Kansas submission

The Kansas Secretary of State reiterated Kansas's request that the EAC include the state's documentary proof of citizenship requirements on the Federal Form, based on the Secretary's view that under the Supreme Court's decision in *Inter Tribal Council*, the EAC has a non-discretionary duty under the U.S. Constitution to do so. EAC000563-65; EAC000578-610. Kansas provided affidavits and supporting documents from various state and local election officials that purport to demonstrate the number of non-citizens who illegally registered to, and did, vote in Kansas elections and to support Kansas's position that additional proof of citizenship is necessary to enforce its voter qualification requirements. EAC000611-68. Kansas further

argued that unless the EAC adds the requested language to the Federal Form, the state will be required to implement a costly dual registration system.

3. *Kobach v. EAC* intervenor submissions

The four groups of individuals and advocacy organizations that intervened as defendants in the pending litigation each submitted public comments in response to the EAC's Notice. EAC000710-20, EAC000723-51, EAC000754-887 (League of Women Voters group); EAC000910-1256, EAC001260-1542 (Valle del Sol group); EAC001809-26 (Project Vote); EAC001546-94 (ITCA group). The League of Women Voters and Valle del Sol groups argued that the EAC lacks authority to grant the states' requests because it lacks the requisite quorum of commissioners. The Valle del Sol and Project Vote groups argued that the requested changes were inconsistent with the NVRA's purpose and that the states had not demonstrated a need for additional proof of citizenship to prevent fraudulent registrations. Project Vote contended that the documentary requirements would burden voter registration applicants, reduce the number of eligible voters, and violate the NVRA's prohibition on formal authentication of eligibility requirements. The Inter Tribal Council of Arizona group conceded that the EAC has authority to grant or deny the states' requests, but agreed with the other intervenor-defendant groups that the states have not demonstrated the necessity for their instructions because they have other means of verifying voter eligibility.

4. Other advocacy group submissions

Of the ten comments from advocacy groups that have not intervened in the pending litigation, four supported and six opposed the states' requests. True the Vote cited to voter registration processes in Canada and Mexico to support its claim that the instructions at issue are necessary for the states to assess voter eligibility and suggested that the requested state-specific instructions would lead to greater perceived legitimacy in the electoral process. EAC000707-09.

Similarly, Judicial Watch argued that if the EAC failed to update the form, it would undermine Americans' confidence in the fairness of U.S. elections and thwart states' ability to comply with the provisions of Section 8 of the NVRA regarding maintenance of voter rolls. EAC000474-80. Judicial Watch and the Federation for American Immigration Reform both suggested that the denial of the states' requests would hinder individual states' ability to maintain the integrity of elections. EAC001605-09. The Immigration Reform Law Institute argued that the EAC should grant the states' requests because, in its view, the Supreme Court ruling in *Inter Tribal Council* requires it to do so. EAC001543-45.

The ACLU was one of seven non-intervenor advocacy groups that opposed the states' requests. It argued that the documentation requirement would be overly burdensome, would violate the NVRA, and would discourage voter registration. EAC000888-96. The Asian American Legal Defense and Education Fund argued that Arizona, Georgia, and Kansas have histories of discrimination against Asian Americans, and argued that the true intent of the states' laws was to disenfranchise eligible citizens. EAC001598-1603. The Coalition of Georgia Organizations contended that the additional requirements would make the registration process harder instead of simplifying it, as they contend the NVRA intended. EAC001838-40.

Communities Creating Opportunity argued that the proposed requirement would adversely impact vulnerable and marginalized communities (low-income and people of color) the most. Further, the group asserted that the requested change would be costly and unnecessary, and would complicate, delay, and deter participation in the electoral process. EAC000699-700. Demos pointed to the decrease in voter registration since the enactment of Arizona's Proposition 200 and contended that the requested instructions would impair community voter registration drives by requiring documents that many citizens do not generally carry with them and may not

possess at all. EAC000900-07. The League of United Latin American Citizens (“LULAC”) shares that view and cited data purporting to show the small number of voter fraud cases between 2000 and 2011 in Arizona compared to the millions of ballots cast in that timeframe.

EAC000701-03.

5. State and local official submissions

Officials from Arizona’s Apache (EAC000560-61), Cochise (EAC000218), Mohave (EAC000226-34) and Navajo (EAC000219) counties and Kansas’s Ford (EAC000220), Harvey (EAC000421-23), Johnson (EAC001831-33) and Wyandotte (EAC001258-59) counties urged the EAC to grant the States’ requests. Angie Rogers, the Commissioner of Elections for the Louisiana Secretary of State, supported the States’ requests because she believes states have “the constitutional right, power and privilege to establish voting qualifications, including voter registration requirements[.]” EAC000216.

Rep. Martin Quezada of the Arizona House of Representatives and defendant-intervenor Sen. Steve Gallardo of the Arizona State Senate opposed Arizona’s request because they contend that the warnings and advisories contained on the Federal Form already deter non-citizens from voting, that there is no evidence of voter registration fraud, and that the requirement for additional proof of citizenship would burden citizens who do not possess the documents and would contravene the NVRA’s goal of creating a uniform, national voter registration process. EAC000704-05; EAC001618-21. Mark Ritchie, the Minnesota Secretary of State, asserted that some senior citizens in Minnesota do not have and cannot obtain proof of citizenship, that the expense of obtaining relevant documents might be tantamount to a poll tax, and that implementing the States’ proposals in his state would make it more difficult for citizens to register and could be an equal protection violation. EAC001804. U.S. Representative Robert Brady of Pennsylvania argued that the States’ requests are an attempt to disenfranchise eligible

voters and that the Federal Form already adequately requires applicants to affirm their citizenship. EAC001595.

6. Individual citizen submissions

Of the 385 citizen comments, the vast majority of which were made by Kansas residents, 372 were in favor of the States' requests. Several respondents expressed "high support" for the requests as crucial to preventing voter fraud, and argued that failure to grant the requests would create "havoc" in future elections, presumably because the States may be required to create separate registration databases for federal and state registrants. Others argued that the right to vote should not be hindered by what they consider incorrect and outdated state-specific instructions. Other citizens expressed the desire for elections to be orderly and their view that the EAC's denial of the States' requests would violate what they believe is the States' exclusive power to set voter qualifications. Hans A. von Spakovsky, an attorney, former member of the Federal Election Commission, and former local election official in Fairfax County, Virginia, argued that the EAC has no authority to refuse to approve state-specific instructions that deal with the eligibility and qualification of voters and that extant citizenship provisions on the Federal Form have been ineffective in discouraging non-citizens from illegally registering and voting. EAC000680-85.

Thirteen citizen commenters opposed the States' requests because they believed that the proposals were unconstitutional, would limit and suppress the vote of certain classes of disadvantaged Americans, would make the voting process more restrictive, would discourage legitimate voters from voting, and were otherwise unnecessary.

II. CONSTITUTIONAL, STATUTORY, AND REGULATORY BACKGROUND

A. *Constitution*

The Qualifications Clause of the United States Constitution, Art. I, § 2, cl. 1, provides that in each state, electors for the U.S. House of Representatives “shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” *See also* U. S. Const. amend. XVII (same for the U.S. Senate). This clause and the Seventeenth Amendment long have been held to give exclusive authority to the states to determine the qualifications of voters for federal elections. *Inter Tribal Council*, 133 S. Ct. at 2258.

By contrast, the Elections Clause of the Constitution provides that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U.S. Const. art. I, § 4, Cl. 1. In *Inter Tribal Council*, the Supreme Court held that the Election Clause’s “substantive scope is broad.” *Inter Tribal Council*, 133 S. Ct. at 2253. “‘Times, Places, and Manner,’ [the Supreme Court has] written, are ‘comprehensive words,’ which ‘embrace authority to provide a complete code for congressional elections,’ including, *as relevant here . . . regulations relating to ‘registration.’*” *Id.* at 2253 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932) (emphasis added)). Thus, in its latest decision on the Elections Clause, the Supreme Court reaffirmed its long held determination that the Elections Clause gives Congress plenary authority over voter registration regulations pertaining to federal elections. Although the states remain free to regulate voter registration procedures for state and local elections,⁵ they must yield to federal regulation of voter

⁵ Such regulations, however, may not violate other provisions of the Constitution, such as by discriminating against United States citizens on the basis of their race, color, previous condition of servitude, sex, or age over 18 years. U.S. Const. amends. XIV, XV, XIX, XXVI.

registration procedures for federal elections. *Id.*; *see also Cook v. Gralike*, 531 U. S. 510, 523 (2001); *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972).

B. National Voter Registration Act and Help America Vote Act

Exercising its authority under the Elections Clause, Congress enacted the NVRA in 1993 in response to its concern that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office.” 42 U.S.C. § 1973gg(a)(3). As originally enacted, the NVRA assigned authority to the Federal Election Commission “in consultation with the chief election officers of the States” to “develop a mail voter registration application form for elections for Federal office” and to “prescribe such regulations as are necessary to carry out” this responsibility, and further provides that “[e]ach State shall accept and use the mail voter registration application form prescribed by the [FEC].” 42 U.S.C. §§ 1973gg-4(a)(1), 1973gg-7(a)(2). The FEC undertook this responsibility, in consultation with the States, and issued the original regulations on the Federal Form in 1994. NVRA Final Rule Notice, 59 Fed. Reg. 32,311 (June 23, 1994). In the Help America Vote Act of 2002 (“HAVA”), all of the NVRA functions originally assigned to the FEC were transferred to the EAC. 42 U.S.C. § 15532. Congress mandated in part the contents of the Federal Form and explicitly limited the information the EAC may require applicants to furnish on the Federal Form. In particular, the form “may require *only* such identifying information . . . *as is necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 42 U.S.C. § 1973gg-7(b)(1) (emphasis added). Further, it “may not include any requirement for notarization or other formal authentication.” 42 U.S.C. § 1973gg-7(b)(3). The Federal Form must, however, “include a statement that . . . specifies each eligibility requirement (including citizenship)”; “contains an attestation that the applicant meets each such requirement”; and “requires the signature of the

applicant, under penalty of perjury.” 42 U.S.C. § 1973gg-7(b)(2). Additionally, pursuant to HAVA, the Federal Form must include two specific questions and check boxes for the applicant to indicate whether he meets the U.S. citizenship and age requirements to vote. 42 U.S.C. § 15483(b)(4)(A).

C. The Federal Form

Pursuant to its rulemaking authority, the EAC has promulgated the requirements for a Federal Form that meets NVRA and HAVA requirements. *See* 11 C.F.R. part 9428 (implementing regulations); 42 U.S.C. §§ 1973gg-7(a), 15329. The form consists of three basic components: the application, general instructions, and state-specific instructions. 11 C.F.R. §§ 9428.2 (a), 9428.3 (a); *see also* EAC000073-97. The application portion of the Federal Form “[s]pecif[ies] each eligibility requirement,” including “U.S. Citizenship,” which is “a universal eligibility requirement.” 11 C.F.R. § 9428.4(b)(1). To complete the form, an applicant must sign, under penalty of perjury, an “attestation . . . that the applicant, to the best of his or her knowledge and belief, meets each of his or her state’s specific eligibility requirements.” 11 C.F.R. §§ 9428.4(b)(2), (3). The state-specific instructions for Arizona, Georgia and Kansas include the requirement that applicants be United States citizens. *See* EAC000081, EAC000083, EAC000085.

Neither the NVRA nor the EAC regulations specifically provide a procedure for states to request changes to the Federal Form. The NVRA simply directs the EAC to develop the Federal Form “in consultation with the chief election officers of the States.” 42 U.S.C. §§ 1973gg-7(a)(2). To that end, the regulations provide that states “shall notify the Commission, in writing, within 30 days of any change to the state’s voter eligibility requirements[.]” 11 C.F.R. § 9428.6(c). The regulations leave it solely to the EAC’s discretion whether and how to incorporate those changes. Indeed, the Supreme Court has described the EAC’s authority and

duty to determine the contents of the Federal Form, including any state-specific instructions included therein, as “validly conferred *discretionary* executive authority.” *Inter Tribal Council*, 133 S. Ct. at 2259 (emphasis added). Thus, the EAC is free to grant, deny, or defer action on state requests, in whole or in part, so long as its action is consistent with the NVRA and other applicable federal law. The EAC (and before it the FEC) received and acted upon numerous requests over the years from States to modify the Federal Form’s State-specific instructions in various respects.

III. THE COMMISSION’S ABILITY TO ACT ON THE REQUESTS IN THE ABSENCE OF A QUORUM OF COMMISSIONERS

Sections 203 and 204 of HAVA provide that the Commission shall have four members, appointed by the President with the advice and consent of the Senate, as well as an Executive Director, General Counsel, and such additional personnel as the Executive Director considers appropriate. 42 U.S.C. §§ 15323, 15324. Section 208 of HAVA provides that “[a]ny action which the Commission is authorized to carry out under [HAVA] may be carried out only with the approval of at least three of its members.” *Id.* § 15328. Finally, Section 802(a) of HAVA directs that the functions previously exercised by the Federal Election Commission under Section 9(a) of the NVRA, *id.* § 1973gg-7(a), would be transferred to the EAC. *Id.* § 15532.

All four of the appointed commissioner seats are currently vacant. Accordingly, several commenters have suggested that the EAC presently lacks the authority, in whole or in part, to act on the States’ requests for modifications to the state-specific instructions on the Federal Form.⁶

Notably, the States do not assert that the Commission currently lacks authority to act on their

⁶ The Valle del Sol group of commenters, for example, asserts the Commission’s staff cannot take any action on the requests in the absence of a quorum. *See* EAC001448-55. The League of Women Voters and Project Vote commenters, by contrast, argue that the Commission’s staff may act to deny the requests and thus maintain the Federal Form as it stands, but not to grant them and thus change the Form. *See* EAC000764-66; EAC001810-13.

requests; indeed, the States believe that the EAC has a nondiscretionary duty to grant their requests. EAC000564-65, EAC000593-97. As explained below, under current EAC policy, as previously established in 2008 by a quorum of EAC commissioners, EAC staff has the authority to act on all state requests for modifications to the instructions on the Federal Form.

A. *The 2008 Roles and Responsibilities Policy Delegates Federal Form Maintenance Responsibilities to the Executive Director.*

In 2008, the three EAC commissioners who were then in office unanimously adopted a policy entitled, “The Roles and Responsibilities of the Commissioners and Executive Director of the U.S. Election Assistance Commission.” See EAC000064-72 (“R&R Policy”). This policy “supersede[d] and replace[d] any existing EAC policy that [was] inconsistent with its provisions.” EAC000072. “The purpose of the policy,” according to the commissioners, was “to identify the specific roles and responsibilities of the [EAC’s] Executive Director and its four Commissioners in order to improve the operations of the agency.” EAC000065 (emphasis added).

The commissioners were well aware of and cited to the general quorum requirements contained in Section 208 of HAVA, as well as the notice and public meeting requirements contained in the Government in the Sunshine Act, 5 U.S.C. § 552b(a)(2), which apply whenever a quorum of commissioners meets to discuss official agency business. EAC000065. Further, the commissioners were cognizant of the practical reality that, “[u]ltimately, if all functions of the Commission (large and small) were performed by the commissioners, the onerous public meeting process would make the agency unable to function in a timely and effective matter [sic]. Recognizing these facts, HAVA provides the EAC with an Executive Director and staff. (42 U.S.C. § 15324).” EAC000065. Finally, the commissioners recognized that “HAVA says little about the roles of the Executive Director and the Commissioners,” but that “a review of the

statute, the structure of the EAC and EAC's mission suggest a general division of responsibility" among them, whereby the commissioners would set policy for the agency, and the Executive Director would implement that policy and otherwise take operational responsibility for the agency. EAC000065.

More specifically, under the R&R Policy, the commissioners are responsible for developing agency policy, which is defined as "high-level determination, setting an overall agency goal/objective or otherwise setting rules, guidance or guidelines at the highest level." EAC000064. The Commission "only makes policy through the formal voting process" of the commissioners. *Id.* Among the policy matters specifically reserved to the commissioners, for example, are "[a]doption of NVRA regulations" and "[i]ssuance of Policy Directives." EAC000065.

The EAC commissioners delegated the following responsibilities (among others) to the Executive Director under the R&R policy: "[m]anage the daily operations of EAC consistent with Federal statutes, regulations, and EAC policies"; "[i]mplement and interpret policy directives, regulations, guidance, guidelines, manuals and other policies of general applicability issued by the commissioners"; "[a]nswer questions from stakeholders regarding the application of NVRA or HAVA consistent with EAC's published Guidance, regulations, advisories and policy"; and "[m]aintain the Federal Voter Registration Form consistent with the NVRA and EAC Regulations and policies." EAC000070-71.

The Executive Director was further directed to "issue internal procedures which provide for the further delegation of responsibilities among program staff and set procedures (from

planning to approval) for all program responsibilities.”⁷ EAC000072. Finally, while the R&R policy directs the Executive Director to keep the commissioners informed of “all significant issues presented and actions taken pursuant to the authorities delegated [by the R&R policy],” it also specifically provides that “*the commissioners will not directly act on these matters.*” *Id.* (emphasis added). Rather, the commissioners will use the information provided by the Executive Director to “provide accurate information to the media and stakeholders” and to determine “when the issuance of a Policy Directive is needed to clarify or set policy.” *Id.*

B. The Commissioners’ Delegation of Federal Form Maintenance Responsibilities to EAC Staff is Presumptively Valid Under Federal Law and Does Not Contravene HAVA.

The three EAC commissioners’ unanimous adoption of the 2008 Roles and Responsibilities policy, wherein agency policy implementation and operational responsibilities (including Federal Form maintenance responsibilities) were delegated to the Executive Director, was “carried out . . . with the approval of at least 3 of [the EAC’s] members,” as required by Section 208 of HAVA. As a general matter, “[w]hen a statute delegates authority to a federal officer or agency, subdelegation to a subordinate federal officer or agency is presumptively permissible absent affirmative evidence of a contrary congressional intent.” *U.S. Telecom Ass’n v. F.C.C.*, 359 F.3d 554, 565 (D.C. Cir. 2004). “Express statutory authority is not required for delegation of authority by an agency; delegation generally is permitted where it is not inconsistent with the statute.” *National Ass’n of Psychiatric Treatment Centers for Children v.*

⁷ The Valle del Sol commenters mistakenly cite to the 2011 Wilkey Memorandum as the source of the Executive Director’s authority to act on requests for modifications to the Federal Form’s instructions. EAC001448-55. In fact, the Executive Director derives authority to act on Federal Form maintenance matters from the 2008 R&R policy. The 2011 Wilkey Memorandum was merely an internal operating procedure that described how the then-executive director sought to exercise and delegate (or temporarily refrain from acting upon) the responsibilities that the Commission had delegated to him. That memorandum did not and could not have limited the scope of the commissioners’ original delegation to the Executive Director, which included plenary authority to implement the EAC’s NVRA regulations and NVRA and HAVA requirements, and to maintain the Federal Form consistent therewith.

Mendez, 857 F. Supp. 85, 91 (D.D.C. 1994); accord *Ashwood Manor Civic Ass’n v. Dole*, 619 F. Supp. 52, 65-66 (E.D. Pa. 1985).

In the absence of an express statutory authorization for an agency to delegate authority to a subordinate official, one must look to “the purpose of the statute” to determine the parameters of the delegation authority. *Inland Empire Public Lands Council v. Glickman*, 88 F.3d 697, 702 (9th Cir. 1996). Obviously, “[i]f Congress clearly expresses an intent that no delegation is to be permitted, then that intent must be carried out.” *Ashwood Manor Civic Ass’n*, 619 F. Supp. at 66. On the other hand, in the absence of a specific statutory prohibition or limitation of an agency’s delegation authority, the default rule is that an agency can do so. See, e.g., *Loma Linda University v. Schweiker*, 705 F.2d 1123, 1128 (9th Cir. 1983) (upholding delegation of HHS Secretary’s statutory review authority to subordinate official where “Congress did not specifically prohibit delegation”).

As the EAC commissioners themselves recognized in the R&R policy, “HAVA says little about the roles of the Executive Director and the Commissioners,” but the statute and the EAC’s structure suggest that there should be a “general division of responsibility” as between the commissioners and the Executive Director. EAC000064. Additionally, HAVA contains no provisions which speak directly to the issue of delegation. As Congress noted, HAVA was enacted, in part, “to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs.” H.R. Rep. No. 107-730, at 2 (Oct. 8, 2002) (Conf. Rep.). There is nothing about that statutory purpose that suggests that it would be inappropriate for the EAC to delegate agency functions to the agency’s staff. Indeed, as the EAC commissioners acknowledged, such division of responsibilities would “improve the operations of the agency”

and avoid creating situations where the agency was “unable to function in a timely and effective [manner].”

Thus, the delegations of authority to the Executive Director in the R&R policy do not appear to conflict with HAVA. In particular, the existence of a quorum provision in Section 208 of HAVA does not prohibit the Commission from delegating administrative and implementing authority to its subordinate staff, so long as such delegation of authority is “carried out . . . with the approval of at least 3 of its members,” as it was in this instance. *Cf.* 42 U.S.C. § 15328.⁸ The R&R policy does not cede policymaking authority to EAC staff; rather, it directs the staff to “implement and interpret” the agency’s policies consistent with federal law and EAC regulations.

Included within the general duty to implement and interpret the agency’s policies is the specific duty to “[m]aintain the Federal Voter Registration Form consistent with the NVRA and EAC Regulations and policies.” EAC000072. “Maintain” means “to keep (something) in good condition by making repairs, correcting problems, etc.” *See* Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/maintain> (last visited Jan. 12, 2014). In the context of the Federal Form, “maintain” includes making such changes to the general and state-specific instructions as is necessary to ensure that they accurately reflect the requirements for registering to vote in federal elections.

⁸ In similar circumstances, courts have upheld agency delegations of authority to subordinate staff, even when, at the time the staff takes the action in question, the agency lacks its statutorily required quorum. *See, e.g., Overstreet v. NLRB*, 943 F. Supp. 2d 1296, 1297-1303 (D.N.M. 2013) (upholding NLRB general counsel’s limited exercise of agency’s enforcement authority, pursuant to a previous delegation by a qualifying quorum, and stating that such prior delegation “survives the loss of a quorum”); *California Livestock Prod. Credit Ass’n v. Farm Credit Admin.*, 748 F. Supp. 416, 421-22 (E.D. Va. 1990) (agency’s sole board member was authorized to act, even in absence of statutorily required quorum based on previous delegation of authority by a qualifying quorum).

The EAC's regulations do not prescribe and have never prescribed the text of the Federal Form's general and state-specific instructions. Rather, they mandate that in addition to the actual application used for voter registration, the Federal Form shall contain such instructions, and they partially define what should be included within those instructions. *See* 11 C.F.R. § 9428.3. EAC staff (and before it, FEC staff) has always had the responsibility and discretion to develop and, where necessary, revise and modify the text of the Federal Form's instructions in a manner that comports with the requirements of federal law and the EAC's regulations and policies. That remains the case whether or not a quorum of commissioners exists at any given time.

Having determined, based on the foregoing, that the Commission has the authority to act on these requests even in the absence of a quorum of commissioners, we proceed to address the merits of the States' requests.

IV. ANALYSIS

A. *Congress Specifically Considered and Rejected Proof-of-Citizenship Requirements When Enacting the NVRA.*

In determining whether and how to implement state-requested revisions to the Federal Form, the EAC has been guided in part by the NVRA's legislative history. When considering the NVRA, Congress deliberated about—but ultimately rejected—language allowing states to require “presentation of documentary evidence of the citizenship of an applicant for voter registration.” *See* H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.). In rejecting the Senate version of the NVRA that included this language, the conference committee determined that such a requirement was “*not necessary* or consistent with the purposes of this Act,” could “permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act,” and “could also adversely affect the administration of the other registration programs” *Id.* (emphasis added). Congress's rejection of the very requirement

that Arizona, Georgia, and Kansas seek here is a significant factor the EAC must take into account in deciding whether to grant the States' requests. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006) ("Congress' rejection of the very language that would have achieved the result the [States] urge[] here weighs heavily against the [States'] interpretation.").⁹

B. The Requested Proof-of-Citizenship Instructions Are Inconsistent With the EAC's NVRA Regulations.

In promulgating regulations under the NVRA, the FEC "considered what items are deemed necessary to determine eligibility to register to vote and what items are deemed necessary to administer voter registration and other parts of the election process in each state." 59 Fed. Reg. 32311 (June 23, 1994) (NVRA Final Rules). The FEC observed that it was "charged with developing a single national form, to be accepted by all covered jurisdictions, that complies with the NVRA, and that . . . specifies each eligibility requirement (including citizenship)." Further, while determining that the "application identify U.S. Citizenship (the only eligibility requirement that is universal)," the FEC rejected public comments proposing that naturalization information be collected by the Federal Form because the basis of citizenship was deemed irrelevant. As the FEC explained:

The issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury. To further emphasize this prerequisite to the applicant, the words "For U.S. Citizens Only" will appear in prominent type on the front cover of the national mail voter registration form. For these reasons, the final rules do not include th[e] additional requirement [that the Federal Form collect naturalization information].

59 Fed. Reg. at 32316. Furthermore, in response to other public comments suggesting that states could simplify their eligibility requirements so that they can be listed on the Federal Form along

⁹ In addition to Congress's specific rejection of the type of instructions the States now seek, the text of the statute as enacted prohibits the Federal Form from requiring "formal authentication." 42 U.S.C. § 1973gg-7(b)(3). As Project Vote notes in its comment, requiring additional proof of citizenship would be tantamount to requiring "formal authentication" of an individual's voter registration application. EAC001820-21.

with citizenship, the FEC expressed a concern not to “unduly complicate the application” in light of the “variations in state eligibility requirements[.]” *Id.* at 32314.

As a result of HAVA, the FEC and the EAC engaged in joint rulemaking transferring the NVRA regulations from the FEC to the EAC, but made “no substantive changes to those regulations.” 74 Fed. Reg. 37519 (July 29, 2009). Accordingly, the FEC and the EAC, in their implementing regulations, specifically considered and determined, in their discretion, that the oath signed under penalty of perjury, the words “For U. S. Citizens Only” and later the relevant HAVA citizenship provisions, *see* 42 U.S.C. § 15483(b)(4)(A) (adding to the Federal Form two specific questions and check boxes indicating the applicant’s U.S. citizenship), were all that was necessary to enable state officials to establish the *bona fides* of a voter registration applicant’s citizenship. Thus, granting the States’ requests here would contravene the EAC’s deliberate rulemaking decision that additional proof was not necessary to establish voter eligibility.

C. The Requested Proof-of-Citizenship Instructions Are Inconsistent With the EAC’s Prior Determinations.

In addition, the EAC, both by the staff and a duly-constituted quorum of commissioners, has already denied the very same substantive request that is at issue here. As set forth above, by letter dated March 6, 2006, the Commission rejected Arizona’s December 2005 request to add its citizenship documentation requirement to the state-specific instructions for the Federal Form. EAC000002-04. We explained that the “NVRA requires States to both ‘accept’ and ‘use’ the Federal Form,” and that “[a]ny 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.” EAC000004. We concluded that a “state may not mandate additional registration procedures that condition the acceptance of the Federal Form.”

Id.

Arizona's then-Secretary of State, Jan Brewer, wrote several letters of protest to the EAC's then-Chairman, Paul DeGregorio, who recommended to his fellow commissioners that they grant Arizona an "accommodation" and include Arizona's proof of citizenship requirements in the state-specific instructions on the Federal Form. *See* EAC000007-08, EAC000011, EAC000013-14. The four sitting Commissioners rejected Chairman DeGregorio's proposal by a 2-2 vote. EAC000010. By virtue of this decision not to amend the decision, the EAC established a governing policy for the agency, consistent with the NVRA, HAVA, and EAC regulations, that the EAC will not grant state requests to add proof of citizenship requirements to the Federal Form.

The States' current requests for inclusion of additional proof-of-citizenship instructions on the Federal Form are substantially similar to Arizona's 2005 request. (Indeed, Arizona's request is essentially the same request, involving the exact same state law.) As discussed herein, the States have not submitted sufficiently compelling evidence that would support the issuance of a decision contrary to the one that the Commission previously rendered with respect to Arizona in 2006.

D. The Supreme Court's Inter-Tribal Council Opinion Guides the EAC's Assessment of the States' Requests.

As noted above, several organizations challenged Arizona's implementation of its proof-of-citizenship requirement, culminating in the Supreme Court's 2013 ruling in *Inter Tribal Council*, 133 S. Ct. 2247. It is clear from *Inter Tribal Council* that the EAC's task in responding to the States' requests is to determine whether granting their requests is necessary to enable state officials to assess the eligibility of Federal Form applicants.

1. The scope of the Elections Clause is broad.

The Supreme Court began its analysis in *Inter Tribal Council* by observing that the Elections Clause “imposes the duty . . . [on States] to prescribe the time, place, and manner of electing Representatives and Senators” but “confers [on Congress] the power to alter those regulations or supplant them altogether.” *Id.* at 2253. “The Clause’s substantive scope is broad,” the Court continued. “‘Times, Places, and Manner’ . . . are ‘comprehensive words,’ which ‘embrace authority to provide a complete code for congressional elections,’ including, as relevant here . . . , regulations relating to ‘registration.’” *Id.* at 2253 (citing, *inter alia*, *Smiley v. Holm*, 285 U.S. 355, 366 (1932)).

2. The NVRA requirement that states accept and use the Federal Form preempts the States’ proof-of-citizenship requirements.

Having established that the Elections Clause empowers Congress to regulate voter registration procedures for federal elections, the Court examined the text of the NVRA’s provisions governing the Federal Form. It noted that in addition to creating the Federal Form and requiring states to “accept and use” it, the statute also authorizes states “to create their own, state-specific voter-registration forms, which can be used to register voters in both state and federal elections.” *Id.* at 2255 (citing 42 U.S.C. § 1973gg-4(a)(2)). Any state form must “meet all of the criteria” of the Federal Form “for the registration of voters in elections for Federal office.” 42 U.S.C. §§ 1973gg-4(a)(2). The authority given to states to develop their own form for use in state and federal elections “works in tandem with the requirement that States ‘accept and use’ the Federal Form. States retain the flexibility to design and use their own registration forms, but the Federal Form provides a backstop: No matter what procedural hurdles a state’s own form imposes, the Federal Form guarantees that a simple means of registering to vote in federal elections will be available.” *Id.* at 2255.

Thus, the Court “conclude[d] that the fairest reading of the [NVRA] is that a State-imposed requirement of evidence of citizenship not required by the Federal Form is ‘inconsistent with’ the NVRA’s mandate that States ‘accept and use’ the Federal Form.” *Id.* at 2257. The Court also noted that “while the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form, it does not preclude States from ‘deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.’” *Id.* at 2257 (citing Brief of the United States as *Amicus Curiae* at 24).

3. The NVRA provisions governing the contents of the Federal Form are consistent with the Constitution’s allocation of power over federal elections.

In reaching its ruling, the Court was cognizant of the Constitution’s clauses in Article I and the Seventeenth Amendment empowering states to set voter qualifications for federal elections. “Prescribing voting qualifications,” it stated, “‘forms no part of the power to be conferred upon the national government’ by the Elections Clause.” *Id.* at 2258 (quoting *The Federalist No. 60*, at 371 (A. Hamilton)). The Court characterized the voter qualification clauses and the Elections Clause as an “allocation of authority” that “sprang from the Framers’ aversion to concentrated power.” *Id.* at 2258.

In other words, the Court recognized some potential tension between the Elections Clause and the voter qualification clauses. In particular, it noted that “[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.” *Id.* at 2258-59.

The Court concluded, however, that the NVRA, as interpreted by the United States, did not run afoul of this limitation on Congress’s power because it compels the Federal Form to require from applicants “such . . . 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); *see Inter Tribal Council*, 133 S. Ct. at 2259. As a result of this requirement, the Court concluded, “a State may request that the EAC alter the Federal Form to include information the State deems necessary to determine eligibility” and may challenge a rejection of such a request under the Administrative Procedure Act. *Id.* at 2259. Therefore, “no constitutional doubt is raised” by the statute. *Id.* at 2259.

4. The EAC is bound by both the NVRA and the Court’s opinion in *Inter Tribal Council* to determine whether the States’ requests are necessary to enable them to assess the eligibility of Federal Form applicants.

As described above, while Congress provided that the EAC must consult with the nation’s chief state election officials in the development of the Federal Form, it is the EAC that ultimately has the responsibility and discretionary authority to determine the Federal Form’s contents, to prescribe necessary regulations relating to the Federal Form, and to “provide information to the States with respect to the responsibilities of the States under [the NVRA].” *Id.* § 1973gg-7.

This discretionary authority, however, is limited by the terms of the statute, which provide, among other things, that the Federal Form may only require from applicants “such . . . information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant” *Id.* § 1973gg-7(b)(1).

Kansas and Arizona argue that the Constitution’s voter qualification clauses as interpreted by the Court in *Inter Tribal Council* bestow on the EAC a nondiscretionary duty to grant the States’ requests and relieve the agency of its obligation to develop the form consistent with the NVRA’s limitations. EAC000564, EAC000593-97. However, neither the language of the Constitution nor of *Inter Tribal Council* supports such an argument.

First, the States claim that the Constitution “expressly” grants to states “the power to establish *and enforce* voter qualifications for federal elections” and does so “to the exclusion of Congress.” EAC000590 (emphasis added). To the contrary, nothing in the Constitution prohibits the federal government from also enforcing state-established voter qualifications relating to federal elections, so long as the states are not precluded from doing so. Second, the Court describes the NVRA’s delegation of authority to the EAC to develop the Federal Form subject to the prescribed limitations as “validly conferred discretionary executive authority.” *Id.* at 2259. The Court uses this phrase in approving the United States’ interpretation of the NVRA as requiring the Federal Form to contain the information necessary to enable states to enforce their voter qualifications, as well as limiting the Form to that information. *See id.* at 2259. In the EAC’s judgment, the States attempt to impose an unnatural reading on the Court’s language. Furthermore, the language of the NVRA confers on the agency the authority and the duty to exercise its discretion in carrying out the statute’s provisions. The agency will not adopt such a strained reading of this brief passage to circumvent statutory language by which it would otherwise be bound.

We conclude that the States’ contention that the EAC is under a nondiscretionary duty to grant their requests is incorrect. Rather, as the Court explained in *Inter Tribal Council*, the EAC is obligated to grant such requests only if it determines, based on the evidence in the record, that it is necessary to do so in order to enable state election officials to enforce their states’ voter qualifications. If the States can enforce their citizenship requirements without additional proof-of-citizenship instructions, denial of their requests for such instructions does not raise any constitutional doubts.

E. The Requested Proof-of-Citizenship Instructions Would Require Applicants to Submit More Information Than is Necessary to Enable Election Officials to Assess Eligibility.

The States' primary argument in support of their requests is that the EAC is under a constitutional, nondiscretionary duty to grant those requests, *see* EAC000563-65, which as discussed above, is incorrect. However, both Arizona and Kansas also indicate that they believe their requested changes are necessary to enforce their citizenship requirements and not merely a reflection of their legislative policy preferences. *See* EAC000044-46, EAC000564. Therefore, to ensure that the Federal Form continues to comply with the constitutional standard set out in *Inter Tribal Council* and the statutory standard set out in the NVRA, the Commission must consider whether the States have demonstrated that requiring additional proof of citizenship is necessary for the States to enforce their citizenship requirements. For the reasons discussed below, we conclude that the States have not so demonstrated.

1. The Federal Form currently provides the necessary means for assessing applicants' eligibility.

The Federal Form already provides safeguards to prevent noncitizens from registering to vote. The Form requires applicants to mark a checkbox at the top of the Form answering the question, "Are you a citizen of the United States of America," and directs applicants (in bold red text) that they must not complete the Form if they check "No" in response to the question. Should applicants proceed to complete the application, they are also required to sign at the bottom of the Form an attestation that "I am a United States citizen" and "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." EAC000078. In addition, the cover page for the Form states in large, boldface type, "For U.S. Citizens." EAC000073.

In Arizona's correspondence with the EAC and in the States' brief filed in *Kobach v. EAC*, the States argue that a sworn statement such as that required by the Federal Form is "virtually meaningless" and "not proof at all." EAC000045; EAC000605. In support of this argument, the States rely on a remark made by a Supreme Court justice during oral argument in *Inter Tribal Council*. However, remarks by justices at oral argument have no force of law and cannot serve as the basis for this agency's decision-making.

In fact, a written statement made under penalty of perjury is considered reliable evidence for many purposes. *See, e.g.*, Fed. R. Civ. P. 56(c)(1)(A) (permitting parties in civil cases to cite written affidavits or declarations in support of an assertion that a fact is not in genuine dispute); *United States v. Reed*, 719 F.3d 369, 374 (5th Cir. 2013) (criminal defendant's affidavit "constitutes competent evidence sufficient, if believed, to establish" facts in support of his ineffective assistance of counsel claim); *United States v. Haymond*, 672 F.3d 948, 959 (10th Cir. 2012) (FBI agent's affidavit provided sufficient evidence of probable cause to search criminal defendant's home); *Siddiqui v. Holder*, 670 F.3d 736, 742-743 (7th Cir. 2012) (amnesty applicant may satisfy his burden of proof by submitting credible affidavits sufficient to establish the facts at issue); 26 U.S.C. § 6065 (requiring any tax return, declaration, statement, or other document required under federal internal revenue laws or regulations to be made under penalty of perjury).

The overwhelming majority of jurisdictions in the United States have long relied on sworn statements similar to that included on the Federal Form to enforce their voter qualifications, and the EAC is aware of no evidence suggesting that this reliance has been misplaced. As discussed below, the evidence submitted by Arizona and Kansas in connection with their requests does not change this conclusion. Rather, the EAC finds that the possibility of

potential fines, imprisonment, or deportation (as set out explicitly on the Federal Form) appears to remain a powerful and effective deterrent against voter registration fraud. As several commenters note, Arizona, Kansas, and Georgia all relied on such sworn statements for many years prior to their recent enactment of additional requirements. EAC000769; EAC001816-17.

Additionally, two commenters note that Arizona election officials have previously recognized that the benefit to a non-citizen of fraudulently registering to vote is distinctly less tangible than the loss of access to his or her home, job, and family that would come with deportation. *See* EAC001820; EAC001558 (citing Letter from Office of the Secretary of State of Arizona, July 18, 2001, Joint Appendix at 165-66, *Inter Tribal Council*, 133 S. Ct. 2247 (No. 12-71), 2012 WL 6198263 (“It is generally believed that the strong desire to remain in the United States and fear of deportation outweigh the desire to deliberately register to vote before obtaining citizenship. Those who are in the country illegally are especially fearful of registering their names and addresses with a government agency for fear of detection and deportation.”)); *see also* EAC001558-59, EAC001571 (citing 30(b)(6) Dep. of Maricopa County Elections Dep’t (through Karen Osborne) at 29:16-23, Jan. 14, 2008, *Gonzalez v. Arizona*, No. 06-CV-1268 (D. Ariz.) (“I cannot believe that [any noncitizen] would want to jeopardize their situation after having lived here for many years, make their reports every year to the INS, pay their taxes, and do everything, I cannot believe that they would want to jeopardize, especially at the cost of a felony, and then the thought of not being able to stay and not get citizenship”)).

Finally, as also noted by one commenter, Arizona and Kansas still accept sworn statements as sufficient for certain election-related purposes—for example, for an in-county

change of address in Arizona,¹⁰ an in-state change of address in Kansas,¹¹ or an application for permanent advance voting status in Kansas due to disability.¹² EAC000893.

The EAC finds that the evidence in the record is insufficient to support the States' contention that a sworn statement is "virtually meaningless" and not an effective means of preventing voter registration fraud.

2. Evidence submitted by Arizona and Kansas

In further support of their requests, Arizona and Kansas submit evidence in the form of declarations and affidavits by several state and county election officials, letters from the Kansas Secretary of State referring several matters to county attorneys, and documents reflecting heavily redacted voter registration and motor vehicle records. EAC001738-40, EAC000611-68. Georgia did not submit any evidence or arguments in support of its request other than a description of its voter registration procedures, either at the time of its request or in response to the EAC's Notice requesting public comment. EAC001856-57. With the exception of the referral letters and documents reflecting voter registration and motor vehicle records at EAC000629-68, all of the evidence submitted by Arizona and Kansas was included in public court filings prior to the start of the public comment period.¹³ The evidence is summarized as follows:

Arizona

- According to an election official in Maricopa County, Arizona, between 2003 and 2006, at least 37 individuals contacted the recorder's office in Maricopa County and indicated that they were in the process of applying for U.S. citizenship, but were found to have previously registered to vote in Arizona. EAC001739 ¶ 8.

¹⁰ See <http://www.azsos.gov/election/VoterRegistration.htm>.

¹¹ See <http://www.kssos.org/forms/Elections/voterregistration.pdf>.

¹² See Kan. Stat. § 25-1122d(c); <http://www.kssos.org/forms/Elections/AV2.pdf>.

¹³ See *Kobach v. EAC*, No. 13-CV-4095 (D. Kan.), ECF Nos. 19, 20, 25, 101-1, 103.

- According to the Maricopa County election official, in 2005, the recorder's office in Maricopa County referred evidence to the county attorney indicating that some individuals who had registered to vote in the county may have been noncitizens. To the best of the official's recollection, there were 159 individuals implicated. A large number of these individuals had submitted statements to the jury commissioner that they were not citizens. The county attorney brought felony charges against ten noncitizens for filing false voter registration forms. EAC001740 ¶ 10.

Kansas

- According to an election official in the Kansas Secretary of State's office, the office is able to review state driver license data to determine whether individual registrants may have been unlawfully registered to vote. For example, in 2009 and 2010, the office obtained a list of individuals who had obtained temporary driver's licenses in Kansas, which are issued only to noncitizens, and compared that list to its list of registered voters. EAC000611 ¶ 2.
- According to the Kansas election official, upon comparing the temporary license and voter lists in 2009, the Kansas Secretary of State's office identified 13 individuals who had been issued temporary driver's licenses and were also registered to vote. EAC000611-12 ¶ 3. One of these individuals provided a naturalization number on his/her voter registration application. EAC000619 ¶¶ 3-4.
- According to referral letters sent in 2009 by the Kansas Secretary of State to four county attorneys, the information for these 13 individuals matched on name, date of birth, and last four digits of social security number. EAC000632; EAC000637; EAC000640; EAC000659. Documentation provided with the letters indicates that 9 of these individuals had submitted completed Kansas Voter Registration Application forms, EAC000634, -38, -42, -44, -46, -48, -61, -63, -66, and 2 had submitted voter registration applications through the Division of Motor Vehicles, EAC000650, -54. The documents do not indicate how the remaining 2 individuals registered.
- According to the Kansas election official, upon comparing the temporary license and voter lists in 2010, the Kansas Secretary of State's office identified 6 individuals who had been issued temporary driver's licenses and were registered to vote. EAC000620 ¶ 5. No additional information about these individuals has been submitted.
- According to the Kansas election official, in 2010, the election commissioner for Sedgwick County, Kansas, notified the Kansas Secretary of State's office that he had been contacted by the U.S. Department of Homeland Security and provided the name of a noncitizen who was found to have registered to vote in Kansas. EAC000612 ¶ 4.

- According to the election commissioner for Sedgwick County, Kansas, in 2013, her office received a voter registration application submitted through the Kansas Division of Motor Vehicles by an individual who subsequently informed the office that he/she is not a U.S. citizen. EAC000625-26.
- According to the county clerk for Finney County, Kansas, in 2013, an individual submitted to her office a completed and signed Kansas Voter Registration Application form along with copies of a foreign birth certificate and a U.S. Permanent Resident Card. EAC000627-31.

The States argue that this evidence demonstrates that requiring additional proof of citizenship is necessary to enable them to enforce their citizenship requirements. EAC000564. However, we conclude that this is incorrect because (a) the evidence fails to establish that the registration of noncitizens is a significant problem in either state, sufficient to show that the States are, by virtue of the Federal Form, currently precluded from assessing the eligibility of Federal Form applicants, and (b) the evidence reflects the States' ability to identify potential non-citizens and thereby enforce their voter qualifications relating to citizenship, even in the absence of the additional instructions they requested on the Federal Form.

The States argue that the evidence submitted demonstrates generally that noncitizens have registered to vote in Arizona and Kansas, EAC000605, and specifically that 20 noncitizens have registered to vote in Kansas, EAC000564-65. Several commenters question the reliability of the States' contentions.¹⁴ For present purposes, however, we assume that Arizona has demonstrated that 196 noncitizens were registered to vote in that state and that Kansas has demonstrated that 21 noncitizens were registered to vote or attempted to register in that state.

¹⁴ The commenters point to two specific shortcomings: (1) they note that statements made to a jury commissioner are not always reliable, since some citizens may falsely claim to be non-citizens in order to avoid jury service, EAC001560, EAC001589; EAC001475, EAC001145; and (2) they point out that it is possible that the driver license database information that Kansas relied upon may include citizens who became naturalized after obtaining their license, EAC001560-61; *see also* EAC001473-74.

This data nevertheless fails to demonstrate that the States' requests must be granted in order to enable them to assess the eligibility of Federal Form applicants.

At the time Kansas's new proof-of-citizenship requirement took effect in January 2013, there were 1,762,330 registered voters in the state.¹⁵ Thus Kansas's evidence at most suggests that 21 of 1,762,330 registered voters, approximately 0.001 percent, were unlawfully registered noncitizens around the time its new proof-of-citizenship requirement took effect. EAC001561-62; *see also* EAC000770; EAC001472.

At the time Proposition 200 took effect in January 2005, there were 2,706,223 active registered voters in Arizona.¹⁶ Thus Arizona's evidence at most suggests that 196 of 2,706,223 registered voters, approximately 0.007 percent, were unlawfully registered noncitizens around the time that Proposition 200 took effect. EAC001561.

There were 1,598,721 active registered voters in Maricopa County at this time,¹⁷ so these 196 noncitizens comprised just 0.01 percent of registered voters in Maricopa County, also a very small percentage. *See* EAC000770; EAC001475. Additionally, as noted in one comment, during the *Inter Tribal Council* litigation, election officials from three other Arizona counties gave deposition testimony stating that they were not able to find any evidence of noncitizens registering to vote between 1996 and 2006. EAC001476, EAC001236-46.

By any measure, these percentages are exceedingly small. Certainly, the administration of elections, like all other complex functions performed by human beings, can never be

¹⁵ *See* State of Kansas Office of the Secretary of State, 2013 January 1st (Unofficial) Voter Registration Numbers, *available at* http://www.kssos.org/elections/elections_registration_voterreg.asp (last visited Jan. 12, 2014).

¹⁶ *See* State of Arizona Registration Report, January 2005, <http://azsos.gov/election/voterreg/2005-01-01.pdf>.

¹⁷ *See* State of Arizona Registration Report, January 2005, <http://azsos.gov/election/voterreg/2005-01-01.pdf>.

completely free of human error. In the context of voter registration systems containing millions of voters, the EAC finds that the small number of registered noncitizens that Arizona and Kansas point to is not cause to conclude that additional proof of citizenship must be required of applicants for either state to assess their eligibility, or that the Federal Form precludes those states from enforcing their voter qualifications.

Our conclusion that some level of human error is inevitable is reinforced by the evidence Kansas submitted suggesting that three noncitizens have registered to vote by submitting applications through the state's Division of Motor Vehicles. As one comment notes, Kansas requires driver's license applicants to provide documentation of their citizenship status. EAC001559-60 (citing <http://www.ksrevenue.org/dmvproof.html>). Thus, these registrants were already required to show, apparently at the time they were applying to register to vote (in connection with their simultaneous driver license transaction), the type of citizenship evidence the States now seek to require and yet they were still offered the opportunity to register to vote and their registrations were still accepted, both presumably as a result of human error. These cases provide no support for the proposition that Kansas's requested instruction is necessary to enable it to enforce its citizenship requirement.

Finally, we note, as have several commenters, that the proof-of-citizenship laws enacted in Arizona, Kansas, and Georgia all exempt individuals who were registered at the time the laws took effect from complying with the new proof-of-citizenship requirements. These laws therefore treat previously registered voters differently from voters yet to register, but the States have not provided any evidence suggesting that voters attempting to register before the laws took effect were any more or less likely to be noncitizens than those attempting to register after the laws took effect. This suggests that the information required by the Federal Form has

historically been considered sufficient to assess voter eligibility, even in the recent past.

EAC001817. In conjunction with the paucity of evidence provided by the States regarding noncitizens registering to vote, this aspect of the laws suggests that the new requirements reflect the States' legislative policy preferences and are not based on any demonstrated necessity.

EAC001562; EAC000892.

3. Additional evidence noted by comments

Several comments note evidence of noncitizens registering to vote in other states. *See, e.g.*, EAC001607-08; EAC001544; EAC000683-84. Other comments note that efforts in other states have identified only small numbers of noncitizens on the voter rolls, *see* EAC1474-75, and that voter fraud generally is rare, *see* EAC001620. The evidence submitted does not suggest that there have been significant numbers of noncitizens found to have registered to vote in other states. Rather, the evidence appears similar in magnitude to that which Arizona and Kansas have submitted. In any event, we find that the limited anecdotal evidence from other states does not establish that Arizona, Kansas, and Georgia will be precluded from assessing the eligibility of Federal Form applicants if the Commission denies their requested instructions.

4. Additional means of enforcing citizenship requirements

Occasional occurrences of unlawful registrations are no more reflective of the inefficacy of the existing oaths and attestations for voter registration than are the occasional violations of any other laws that rely primarily on oaths and attestations, such as those prohibiting the filing of false or fraudulent tax returns. As long as a state is able to identify illegal registrations and address any violations (whether through removal from the voter rolls, criminal prosecution, and/or other means), and the occurrence of such violations is rare, then the state is able to enforce its voter qualifications. And as the Supreme Court noted in *Inter Tribal Council*, nothing

precludes a State from “deny[ing] registration based on information in their possession establishing the applicant’s ineligibility.” *Inter Tribal Council*, 133 S. Ct. at 2257.¹⁸

As discussed below, the States have a myriad of means available to enforce their citizenship requirements without requiring additional information from Federal Form applicants.

a) Criminal prosecution

Section 8 of the NVRA mandates that states inform voter registration applicants of the “penalties provided by law for submission of a false voter registration application.” 42 U.S.C. § 1973gg-6(a)(5)(B). Section 9 of the NVRA and EAC regulations likewise require that information regarding criminal penalties be provided on the Federal Form “in print that is identical to that used in the attestation portion of the application.” *Id.* § 1973gg-7(b)(4)(i); 11 C.F.R. § 9428.4(b)(4). Federal law and the laws of Arizona, Georgia, and Kansas all impose serious (usually felony-level) criminal penalties for false or fraudulent registration and voting.¹⁹ Additionally, unlawful registration or voting by a non-citizen can result in deportation or inadmissibility for that non-citizen. *See* 8 U.S.C. §§ 1227(a)(3)(D), (a)(6), 1182(a)(6)(C)(2), (a)(10)(D).

¹⁸ The converse is also true: absent any evidence in the state’s possession that contradicts the specific information on the voter registration application, to which the applicant has attested under penalty of perjury, the registration official should accept the sworn application as sufficient proof of the applicant’s eligibility and register that applicant to vote in Federal elections in accordance with Section 8(a)(1) of the NVRA. *See* 42 U.S.C. § 1973gg-6(a)(1) (requiring States to “ensure that any eligible applicant is registered to vote” in Federal elections “if the valid voter registration form of the applicant” is submitted or received by the close of registration).

¹⁹ *See, e.g.*, 18 U.S.C. § 1015(f) (false claim of citizenship in connection with voter registration or voting; imprisonment for 5 years and a \$250,000 fine); 42 U.S.C. § 15544(b) (same); 18 U.S.C. § 611 (Class A misdemeanor penalty for voting by aliens; imprisonment for 1 year and a \$100,000 fine); 42 U.S.C. § 1973gg-10(2) (false or fraudulent registration or voting generally; imprisonment for 5 years and a \$250,000 fine); 18 U.S.C. § 911 (false and willful misrepresentation of citizenship; imprisonment for 3 years and a \$250,000 fine); Ariz. Rev. Stat. §§ 16-182 (false registration; class 6 felony), 16-1016 (illegal voting; class 5 felony); Ga. Code Ann. §§ 21-2-561 (false registration; felony; imprisonment for 10 years and a \$100,000 fine), 21-2-571 (unlawful voting; felony; imprisonment for 10 years and a \$100,000 fine); Kan. Stat. §§ 25-2411 (election perjury; felony), 25-2416 (voting without being qualified; misdemeanor).

The evidence submitted by Arizona and Kansas shows that the States are able to enforce their voter qualifications through the initiation of criminal investigations and/or prosecutions under their state criminal laws, where necessary. EAC000632-68; EAC001738-40. To be sure, the numbers of these criminal investigations and prosecutions appear to be quite small; however, there is no evidence in the record to suggest that the small number of criminal referrals is attributable to anything other than the strength of the deterrent effect resulting from the existence of these criminal laws.²⁰ Indeed, as the ITCA commenters point out, Arizona officials have previously acknowledged this very fact. EAC001558-60 & n.12.

b) Coordination with driver licensing agencies

One available measure is suggested by Kansas's own evidence describing procedures to identify potential non-citizens on its voter rolls by comparing the list with a list of Kansas residents who hold temporary driver's licenses issued to noncitizens. EAC000611-12 ¶¶ 2-3; EAC000620 ¶ 5. Using accurate, up-to-date, and otherwise reliable data, this procedure could potentially be applied to prospective registrants. Indeed, Section 202 of the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 312-15 (2005), requires state driver licensing agencies that wish for their IDs to be honored by federal agencies to collect documentary proof of citizenship for U.S. citizens, verify it, and retain copies of it in their databases.²¹ Section 303 of HAVA requires that voter registrants provide their driver's license number or the last four digits

²⁰ The ITCA commenters also note that the vast majority of these criminal investigations do not result in prosecutions. EAC001559-62.

²¹ Georgia and Kansas have reported that they are fully compliant with the REAL ID Act. See Department of Homeland Security, *REAL ID Enforcement in Brief* (Dec. 20, 2013), <http://www.dhs.gov/sites/default/files/publications/REAL-ID-IN-Brief-20131220.pdf> (last accessed Jan. 12, 2014). And while Arizona has not yet reported its full compliance with the REAL ID Act, Arizona law nevertheless mandates that the state may not "issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law." Ariz. Rev. Stat. § 28-3153(D); Ariz. Dep't of Transp., Motor Vehicle Div., *Identification Requirements*, Form 96-0155 R09/13, <http://www.azdot.gov/docs/default-source/mvd-forms-pubs/96-0155.pdf?sfvrsn=2> (last accessed Jan. 12, 2014).

of their Social Security number if they have one, and mandates that state election agencies coordinate with state driver licensing agencies to share certain database information relevant to voter registration. 42 U.S.C. § 15483. While HAVA does not require states to seek to verify citizenship as part of database comparisons, states have the discretion to undertake such a comparison as an initial step in identifying possible non-citizens, bearing in mind that the information in driver license databases may be older than that in voter registration databases.²²

c) Comparison of juror responses

Another measure is suggested by Arizona's submission: using information provided to a jury commissioner. A person's response under oath to a court official that he or she is not a citizen would certainly provide probable cause for an election official to investigate whether the person, if registered as a voter, does not meet the citizenship qualification. Such responses relating to citizenship therefore provide election officials with another means of enforcing their voter qualifications.

d) The SAVE database

The United States Citizenship and Immigration Services agency maintains a database of the immigration/citizenship status of lawful noncitizen and naturalized citizen residents of the United States. *See* USCIS, *SAVE Program*, <http://www.uscis.gov/save> (last accessed Jan. 12, 2014). Government agencies may apply to use and access the federal SAVE database as one potential means of attempting to verify applicants' immigration/citizenship status under appropriate circumstances. *Id.* Several Arizona county election offices are already using this database to attempt to verify citizenship of voter registration applicants. EAC000771.

²² As the ITCA commenters note, a driver's citizenship status at the time he or she initially applies for a driver's license is not necessarily determinative of his or her citizenship status at the time of that driver's registration to vote. EAC001560-61.

e) **Requesting and verifying birth record data**

The National Association for Public Health Statistics and Information Systems (NAPHSIS), a national association of state vital records and public health statistics offices, has developed and implemented an electronic system called Electronic Verification of Vital Events (EVVE). The EVVE system allows member jurisdictions to immediately confirm birth record information for citizens virtually anywhere in the United States. Currently 50 of 55 U.S. states and territories are either online or in the process of getting online with the EVVE birth record query system.²³ Thus, to the extent election officials are unable to confirm an applicant's oath and attestation of citizenship on the voter registration application through coordinating with a driver licensing bureau or using the SAVE Database, they could follow up directly with the affected applicant and request additional information that would enable them to make a query through the EVVE system (such as place of birth, mother's maiden name, etc.).

The above methods appear to provide effective means for identifying individuals whose citizenship status may warrant further investigation.²⁴

In conclusion, the Commission finds, based on the record before it, that the States are not "precluded...from obtaining the information necessary to enforce their voter qualifications," and that the required oaths and attestations contained on the Federal Form are sufficient to enable the States to effectuate their citizenship requirements. *Cf. Inter-Tribal Council*, 133 S. Ct. at 2259-60. Thus, the States have not shown that the EAC is under a "nondiscretionary duty," *id.* at

²³ See NAPHSIS, *EVVE Vital Records Implementation: Birth Queries (December 2013)*, http://www.naphsis.org/about/Documents/EVVE_Implementation_Dec_2013%20Birth%20Queries%20with%20years.pptx (last accessed Jan. 12, 2014).

²⁴ Federal law also provides states with additional tools for verifying voter registration applications by mail. The NVRA allows states to require first-time registrants by mail to vote in person the first time (with limited exceptions). 42 U.S.C. § 1973gg-4(c). HAVA also requires states to take certain verification steps with regard to first time registrants by mail (with limited exceptions). 42 U.S.C. § 15483.

2260, to include the States' requested instructions despite Congress's previous determination, when it enacted the NVRA, that such instructions are generally "*not necessary* or consistent with the purposes of this Act," could "permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act," and "could also adversely affect the administration of the other registration programs...." H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.).

F. The Requested Changes Would Undermine the Purposes of the NVRA.

1. The States' requested changes would hinder voter registration for Federal elections.

As discussed above, Congress enacted the NVRA in part to "increase the number of eligible citizens who register to vote in elections for Federal office" and to "enhance[] the participation of eligible citizens as voters in elections for Federal office." 42 U.S.C. § 1973gg(b). In enacting the statute, Congress found that "the right of citizens of the United States to vote is a fundamental right" and that "it is the duty of the Federal, State, and local governments to promote the exercise of that right." *Id.* § 1973gg(a).

The district court in the *Inter Tribal Council* litigation found that between January 2005 and September 2007, over 31,000 applicants were "unable (initially) to register to vote because of Proposition 200." *Gonzalez v. Arizona*, No. 06-CV-1268, slip op. at 13 (D. Ariz. Aug. 20, 2008), EAC001663. The court further found that of those applicants, only about 11,000 (roughly 30 percent) were subsequently able to register. *Id.* at 14, EAC001664. Several comments provide additional evidence showing that implementation of Arizona's and Kansas's heightened proof-of-citizenship requirements has hindered the registration of eligible voters for federal elections. The requirements impose burdens on all registrants, and they are especially burdensome to those citizens who do not already possess the requisite documentation.

EAC001821-23; EAC001465-71; EAC000771-73; EAC001563; EAC000705; EAC000895; EAC000901-07; EAC001620; EAC001804; EAC001839; EAC001601, EAC001603. Such burdens do not enhance voter participation, and they could result in a decrease in overall registration of eligible citizens. *See, e.g.*, EAC0001823 (referencing news reports that since Kansas’s law took effect in January 2013, between 17,000 to 18,500 applicants have been placed in “suspense” status, mostly because of failure to satisfy the new citizenship proof requirements).

Based on this evidence, the EAC finds that granting the States’ requests would likely hinder eligible citizens from registering to vote in federal elections, undermining a core purpose of the NVRA.

2. The States’ requested changes would thwart organized voter registration programs.

It is also clear from the text of the NVRA that one purpose of the statute’s mail registration provisions is to facilitate voter registration drives. Specifically, Section 6(b) requires state election officials to make mail voter registration forms, including the Federal Form, “available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” 42 U.S.C. § 1973gg-4(b); *see also Charles H. Wesley Educ. Found. v. Cox*, 408 F.3d 1349, 1353 (11th Cir. 2005) (NVRA encourages and protects community-based voter registration drives and obligates states to register eligible citizens if their valid registration forms are received by the registration deadline, thus “limit[ing] the states’ ability to reject forms meeting [the NVRA’s] standards”).

A number of comments state that the heightened proof of citizenship requirements imposed by Arizona and Kansas have led to a significant reduction in organized voter registration programs during the time those requirements have been in effect. The comments indicate that this is due primarily to the logistical difficulties in providing the required proof,

even for those that already possess it. EAC000772, EAC000710-19, EAC000737-42; EAC001466-67, EAC001469-70, EAC001176-80; EAC001620; EAC001825; EAC000904-07.

Based on the evidence submitted, the EAC finds that granting the States' requests could discourage the conduct of organized voter registration programs, undermining one of the statutory purposes of the Federal Form.

G. The Requested Proof-of-Citizenship Instructions Are Not Similar to Louisiana's Request for Modifications to the State-Specific Instructions.

Arizona and Kansas contend that it would be unfair or arbitrary for the Commission to approve Louisiana's 2012 request to modify the Federal Form's state-specific instructions to include HAVA-compliant language, and not to approve Arizona's and Kansas's requests to include additional proof-of-citizenship instructions.²⁵ In August 2012, the EAC approved Louisiana's July 16, 2012, request to amend the state-specific instructions for Louisiana to provide that if the applicant lacks a Louisiana driver's license or special identification card, or a Social Security number, he or she must attach to the registration application a copy of a current, valid photo identification, or a utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the applicant. EAC000167-71.

HAVA provides that federal voter registration applicants must provide their driver's license number, if they have one, or the last four digits of their Social Security number. 42 U.S.C. § 15483(a)(5)(A)(i). If they do not provide such information at the time of registration and they are registering by mail for the first time in a state, they will generally be required to show one of the following forms of identification the first time they vote in a federal election, irrespective of state law: a "current and valid photo identification" or "a copy of a current utility

²⁵ The Louisiana Secretary of State's Office supports the States' requests in this regard. EAC000216.

bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” *Id.* § 15483(b)(2)(A). One of the ways voters who register by mail can fulfill the HAVA ID requirement is to submit a copy of one of the HAVA-compliant forms of identification with their registration application. *Id.* § 15483(b)(3)(A).

Louisiana’s request to modify the state-specific instructions thus largely flowed from HAVA’s identification requirements.²⁶ By contrast, the States’ requests here seek to require federal voter registration applicants to supply additional proof of their United States citizenship beyond the oaths and affirmations already included on the Federal Form, even though such a requirement had already specifically been rejected by Congress when it enacted the NVRA. These are fundamentally different types of requests, and the EAC does not act unfairly and arbitrarily by reasonably treating them differently.

H. The Decision by the Federal Voting Assistance Program to Grant Arizona’s Request Has No Bearing on the States’ Requests to the EAC.

Arizona notes that after passage of Proposition 200, the Federal Voting Assistance Program (“FVAP”) at the Department of Defense granted its request to add instructions regarding its proof-of-citizenship requirement to the Federal Post Card Application, a voter registration and absentee ballot application form for overseas citizens developed pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff(b)(2). EAC001702, EAC001750-51. However, the UOCAVA is a separate statute from the NVRA and contains no language similar to the NVRA’s limitation that the Federal Form “may require only

²⁶ The League of Women Voters’ comments argue that Louisiana’s requested instructions regarding HAVA ID, *see* EAC000168, 000196, and the relevant portions of the Louisiana Election Code, *see* La. Rev. Stat. § 18:104(A)(16), (G), are not in full compliance with HAVA or the NVRA. EAC000760. The EAC will consider the issues the comments have raised. After consulting with Louisiana officials, the Commission will consider whether there are necessary and appropriate modifications to item 6 of the state-specific instructions for Louisiana on the Federal Form to clarify any lingering confusion and to ensure the instruction is in full compliance with the requirements of HAVA relating to federal elections.

such identifying information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 42 U.S.C. § 1973gg-7(b)(1). The FVAP’s decision therefore has no bearing on the States’ requests to the EAC.

I. The EAC’s Regulations Do Not Require Inclusion of State-Specific Instructions Relating Only to State and Local Elections.

Finally, Kansas contends that the EAC is required by its own regulations to include information relating to the state’s proof-of-citizenship requirements. EAC000565. Specifically, Kansas invokes 11 C.F.R. § 9428.3(b), which provides that “the [Federal Form’s] state-specific instructions shall contain . . . information regarding the state’s specific voter eligibility and registration requirements.” By the terms of the NVRA, the Federal Form is a “mail voter registration application form *for elections for Federal office.*” 42 U.S.C. § 1973gg-7(a)(2) (emphasis added). Thus, the EAC’s regulatory provision quoted above can only require the Form’s state-specific instructions to include voter eligibility and registration requirements relating to registration *for Federal elections.*

As discussed above, the Commission has determined, in accordance with Section 9 of the NVRA and EAC regulations and precedent, that additional proof of citizenship is not “necessary . . . to enable the appropriate State election official to assess the eligibility of the applicant,” *cf.* 42 U.S.C. § 1973gg-7(b)(1), and will not be required by the Federal Form for registration for federal elections. Accordingly, the EAC is under no obligation to include Kansas’s requested instruction because it would relate only to Kansas’s state and local elections.

V. CONCLUSION

For the foregoing reasons, the Commission **DENIES** the States’ requests.

Final Agency Action: This Memorandum of Decision shall constitute a final agency action within the meaning of 5 U.S.C. § 704. Notice of the issuance of this decision will be published in the Federal Register and posted on the EAC's website, and copies of this decision will be served upon the chief election officials of the States of Arizona, Georgia, and Kansas, as well as all parties to the pending *Kobach v. EAC* litigation in the U.S. District Court for the District of Kansas.

Done at Silver Spring, Maryland, this 17th day of January, 2014.

THE UNITED STATES ELECTION ASSISTANCE COMMISSION

BY: 

Alice P. Miller
Chief Operating Officer and
Acting Executive Director

EXHIBIT

5

05/25/06 - EAC Ex Parte Communications Policy

Purpose

This policy outlines the manner in which Commissioners of the Election Assistance Commission (EAC) will conduct meetings and other communications with individuals and organizations other than EAC staff or other federal government agencies when the individual or organization is engaged in a particular matter with the EAC. This policy plays an important role in protecting the fairness of the EAC's proceedings by assuring that EAC decisions are not influenced by off-the-record communications between decision makers and individuals or organizations that are interested in the decision. This policy further serves to help EAC and its staff avoid the appearance of impropriety and to ensure that all individuals or organizations are treated fairly and equitably by the Commission.

Ex Parte Communications

No Commissioner or staff member with decision making authority shall communicate ex parte with any prohibited individual regarding a particular matter before the Commission. Ex parte communications are off the record or nonpublic communications. Meetings with Commissioners or decision making staff other than those noticed pursuant to the Government in the Sunshine Act (5

U.S.C. 552(b)) and those required as a part of the EAC certification, accreditation, audit or funding programs are considered to be off the record. A Commissioner or staff member with decision making authority includes any such individual whose official duties may require them to make a final, binding agency decision on a particular matter. The fact that such a formal decision may be administratively appealed is irrelevant. A prohibited individual is any individual representing an entity or industry which is regulated, certified, accredited, audited or otherwise subject to funding decisions made by EAC. Particular matters include but are not limited to audits, certification, accreditation, contracting, and other matters over which EAC has decision making authority. Particular matters are further defined in the following specific scenarios. In addition to the prohibited communications, individuals should seek to avoid any lengthy private communications with such prohibited individuals to avoid even the appearance of impropriety.

EAC Funding Decisions

The Help America Vote Act of 2002 (HAVA) makes EAC responsible for issuing grants, making requirements payments to states, and auditing the use of funding distributed by EAC or other agencies under HAVA. Thus, a particular matter includes requests for grant funding, requests for requirements payments, and audits of requirements payments or grant funding. A particular matter is pending when (1) the state or entity has a pending request for funding before the EAC, (2) the state or entity has been notified by EAC that it intends to conduct a special audit of the funds distributed to that state or entity, or (3) the state or entity has been notified by EAC's

Inspector General that audit findings have been referred to EAC for resolution. Any communication with persons designated to represent a state or other entity funded by EAC regarding the particular matter or any subject matter that could impact the particular matter is prohibited until the specific matter before the Commission is finally resolved.

EAC Voting System Certification

EAC is responsible for certifying voting systems and voting system components pursuant to Section 231 of HAVA. Voting system vendors submit their products for certification by EAC, which includes testing by an EAC accredited laboratory, review of the laboratory's test report by experts, and a final decision by EAC as to whether a voting system should be certified as meeting federal voting system standards or guidelines. A particular matter in this context is the past, current or future certification of a voting system, voting software or a voting system component or any subject matter that would affect or impact such certification. Because many manufacturers or vendors have product lines that include various voting systems and many versions of software, many vendors will be before the Commission nearly continuously. Thus, communications with a vendor over a particular matter with regard to voting system certification will be prohibited from the time when the entity first submits any of its voting systems or components for EAC certification and will continue until such time that the entity notifies EAC that it has no systems before EAC for certification and in the future will not seek EAC certification for any of its product lines, systems, software or components.

EAC Laboratory Accreditation

EAC is responsible for accrediting testing laboratories that will be used to review and testing voting systems under the EAC certification program. See Section 231 of HAVA. A particular matter for purposes of accreditation occurs when the laboratory first seeks to be a part of the EAC certification process, when a laboratory's accreditation is updated or reviewed when new voting system guidelines are implemented, and from time to time when a review of the laboratory's previous accreditation is warranted. Communication with any individual representing a laboratory that desires to be accredited by EAC to test voting systems regarding the current or future accreditation of the laboratory or any subject matter that would impact or affect the accreditation is prohibited under this policy while the laboratory's application for accreditation is pending before EAC and at any time thereafter when a review of the laboratory's accreditation is ongoing.

Applicability

The Ex Parte Communications policy is not applicable to meetings governed by the Sunshine Act, 5

U.S.C. 552b, as such meetings are required to be noticed and open to the public, subject to the exceptions of that law. Furthermore, this policy is not applicable to official actions or hearings conducted by the Commission or its decision making staff as required by EAC's certification and accreditation programs.

Disclosure

If a Commissioner or staff member with decision making authority inadvertently communicates with a prohibited person regarding a particular matter, the Commissioner or staff member shall disclose the communication in writing to the Commission, including the date, time, place, and subject matter of the communication and such disclosure shall be made a part of the official record of the particular matter.

EXHIBIT

6

**Election Assistance Commission
Organizational Management Policy Statement**

Purpose: The purpose of this statement is to define the Election Assistance Commission (“EAC” or “Commission”) organizational management policy with regard to leadership definition and statutory duties, policymaking and day-to-day operations, an order of succession in case of vacancy, and a procedure for ongoing operation of the Commission’s Boards and Technical Committee.

Effect on Other Documents: This document supersedes the Roles and Responsibilities Statement dated September 15, 2008; the EAC Order of Leadership Succession Memorandum dated January 3, 2012; the EAC FACA Board Activity Suspension Memorandum of January 12, 2012, and replaces any existing EAC policy or document that is inconsistent with its provisions.

Effective Date: February 24, 2015

Summary: Part I defines the Commission and its duties; Part II provides for the division of duties with regard to policy making and day-to-day operations; Part III establishes an order of succession in case of vacancy/ies in leadership and/or executive management; Part IV provides a procedure for ongoing operation of the Commission’s Standards Board, Board of Advisors and Technical Guidelines Development Committee.

I. The Election Assistance Commission

The U.S. Election Assistance Commission was established as an independent entity by the Help America Vote Act of 2002 (“HAVA”) 42 U.S.C. § 15321. The Commission consists of four members appointed by the President, by, and with the advice and consent of the U.S. Senate. 42 U.S.C. §15323.

The duties of the Commission are to serve as a national clearinghouse and resource for compiling information on and reviewing procedures with respect to the administration of Federal elections. 42 U.S.C. §15322. The Commission has no regulatory or rulemaking authority, nor is it authorized to impose any action or requirement on any State or unit of local government, except to the extent permitted under the National Voter Registration Act of 1993 (for the purpose of developing the mail voter registration application form for elections for Federal office). 42 U.S.C. §1973gg-7(a).

Any action of the Commission authorized by HAVA requires approval of at least three of its members. 42 U.S.C. §15328. As an agency defined by the Government in the Sunshine Act, 5 U.S.C. §522(b), deliberations resulting in official agency business must be properly noticed and conducted in public (with specific exceptions). 5 U.S.C. §522(b)(a)(2), (c)(1)-(10).

HAVA provides the Commission with a staff, including an Executive Director, General Counsel and other staff. 42 U.S.C. §15324. The Executive Director is appointed by the Commissioners, following the procedures established by HAVA, including taking into

consideration the recommendations of candidates nominated by the Standards Board and by the Board of Advisors (each established by HAVA, 42 U.S.C. §15341). 42 U.S.C. §15324. The General Counsel is appointed by the Commission and serves under the Executive Director. Id. Other Staff may be appointed by the Executive Director as he or she considers appropriate subject to rules prescribed by the Commission. Id.

II. Division of authority regarding policymaking and day-to-day operations

1. **The Commissioners shall make and take action in areas of policy.** Policymaking is a determination setting an overall agency mission, goals and objectives, or otherwise setting rules, guidance or guidelines. Policymakers set organizational purpose and structure, or the ends the agency seeks to achieve. The EAC makes policy through the formal voting process.

2. **The Executive Director in consultation with the Commissioners is expected to:** (1) prepare policy recommendations for commissioner approval, (2) implement policies once made, and (3) take responsibility for administrative matters. The Executive Director may carry out these responsibilities by delegating matters to staff.

III. Order of succession upon vacancy of all the Commissioners and the Executive Director

Pursuant to National Security Presidential Directive-51/Homeland Security Presidential Directive-20 (May 2007), and Department of Homeland Security Federal Continuity Directive (FCD) 1 (February 2008), an agency “is responsible for establishing, promulgating, and maintaining orders of succession to key positions As a minimum, orders of succession must do the following: 1. Establish an order of succession for the position of agency head. There should be a designated official available to serve as acting head of the agency until that official is appointed by the President or other appropriate authority, replaced by the permanently appointed official, or otherwise relieved.” (FCD 1 p. E-1)

Under the present organizational structure, upon a vacancy of all Commissioners and the Executive Director, the head of the agency shall assume the responsibilities of the Executive Director and the order of succession shall be as follows:

1. General Counsel
2. Chief Operating Officer
3. Chief Financial Officer
4. Communications & Clearinghouse Director
5. Voting Systems Certifications Director
6. Election Administration Research & Programs Director
7. Grants Administrator

Should any position in the order of succession be held by an individual in an “acting” capacity, that position is passed over in favor of the next in line. Once

position has been designated head of the agency in the order of succession, the succession does not revert back up the line when a vacant position (or position previously held by an individual in an acting capacity is replaced by a permanent employee in that position) is filled. Filling vacant positions passed over in the line of succession will only retroactively alter the exercise of the acting Executive Director responsibilities if done so by a majority vote of a quorum of Commissioners in the absence of a full time Executive Director.

IV. Procedure for ongoing operation of the Commission's Boards and Technical Committee

HAVA created two advisory boards and a committee ("boards") that serve to help inform and comment on various aspects of the EAC's policy development. 42 U.S.C. §§15341-15362. These boards were created because Congress recognized the importance of the Commission receiving feedback from the various stakeholder groups represented on the boards throughout the policy development and implementation processes.

The three boards are as follows:

1. Standards Board
2. Board of Advisors
3. Technical Guidelines Development Committee

Should the EAC again find itself in a position where a Commissioner departs the agency or all Commissioner positions become vacant, it is imperative that the boards remain constituted and functional. The following procedure shall be used to ensure the continued operation of the boards:

- The Chair of the Commission shall assign Commissioners to serve as Designated Federal Officers ("designee") to each of the boards.
- Prior to the departure of the Commissioner assigned as the EAC designee to a specific board, that Commissioner may designate another Commissioner to be the EAC required designee to the board. If there are no Commissioners remaining, then the departing Commissioner may designate the Executive Director or an appropriate staff member to serve as the official EAC designee to the board.
- Should a departing Commissioner assigned to a board fail to assign a replacement EAC designee to the board then the duties shall be assigned by the Chair to a remaining Commissioner. If all four Commissioner positions become vacant, and a designee has not been assigned to a board or boards, then the Executive Director may assign an appropriate designee to be the official EAC designee to a board or boards.

- If after a period when all Commissioner positions are vacant, the President appoints one or more Commissioners to fill a vacancy or vacancies on the Commission, the new Chair of the Commission may replace the Executive Director or staff member designee to a board with a Commissioner as the official designee.
- Membership of the Boards and Committee should continue within the parameters as defined by HAVA, 42 U.S.C. §15323 & 42 U.S.C. §15343.

Biannually, the Executive Director shall work with the Office of Personnel Management in consultation with the Commission to do an assessment of the agency's staffing needs to accomplish HAVA's requirements.

Should there be a change in the law that invalidates one provision of this document, the rest of the document remains in effect unless or until the Commission votes on a new document.

EXHIBIT

7

Johnson County Election Office



Brian D. Newby
Election Commissioner

TESTIMONY BEFORE THE HOUSE ELECTIONS COMMITTEE REGARDING HB2067

Monday, January 31, 2011

Members of the Committee:

I have reviewed House Bill 2067 and discussed many of the implementation aspects with the Secretary of State and his staff, as well as staff members at our office.

My primary question during my review of the bill and during these discussions, as an election administrator, was, simply, can we successfully implement the provisions in the bill?

I believe we can.

When I came to the Election Office more than six years ago, I quickly realized that election employees—locally and nationwide—are skilled at process, skilled at implementing, and skilled at execution. In fact, in my opinion, the ability to execute a plan is the competency most coveted by businesses, and that competency is very strong with election professionals.

Of course, our office and our elections are run by human beings, so I think it's unreasonable to expect complete perfection in implementing this bill in 2012, but I have tremendous confidence in our staff to develop procedures and training, and in our election workers to follow that training to execute the new procedures.

One reason for my belief in our election workers is their track record, and another comes from feedback I receive directly from them regarding voter identification.

When it comes to the value of voter identification at the polls, personally, I don't believe my opinion matters. Those of us working elections—in the office, on the phone, and at the polls—have heard enough from voters over the last three years in particular to know that many of our voters want to show identification at the polls. I believe overall voter confidence in the election process will increase if persons are required to show ID when voting.

HOUSE ELECTIONS
DATE: 1/31/11
ATTACHMENT: 4

I know I'm providing anecdotal testimony with that statement; I haven't been keeping an "ID request file" over the last few years, but I do have a small number of comment cards from voters in this past election cycle regarding ID. We've had many more voters who have called and emailed with similar opinions. In fact, our first voter during advance voting in Shawnee in the August 2010 election demanded that we stop and look at her identification because it made her feel better.

Further, I think bill represents an evolutionary step. It's important to note, though, that to some degree we have already had a de facto voter ID provision in place for persons who vote by mail already because we verify signatures on advance applications and on returned ballots. In 2008's presidential election, for instance, more than 50,000 voters had their signatures checked as valid and their ballots processed.

This bill requires that advance applications include an identification number and that is really the only additional step in the process of provisioning advance ballots. I don't expect our workload to increase significantly because of this extra step.

We also see a good number of registrations coming through the Driver's License Bureau now, but we have reviewed the citizenship verification portion of the bill for processing registrations in our office. We will have more paper to handle for registrations, but I'm not sure we will see any dramatic increase in registration work cycles. Registration workload increase is possible, but we regularly send back registrations today because voters did not circle the ovals that say they are citizens today, and with publicity and education efforts getting the word out statewide about the registration change, perhaps we might even see a decrease in the frequency of sending back incomplete registration forms.

We have been working hard to reduce the number of provisional ballots that could be avoided—mostly if someone goes to the wrong polling place. I expect that we will see the number of provisionals increase from 2008, but probably no worse than they were at 2004 levels, which was the first election after the Help America Vote Act was implemented and first-time voters were required to provide ID.

But the good thing there is we have those learnings that have been operationalized and many of the processes that will be utilized with this bill will be extensions of how we handle first-time voters today.

I fully appreciate the discernment this committee will undergo to consider the thoughtful testimony presented by all stakeholders. But ultimately, in looking to advance this bill, the biggest and final question has to be, "Can we actually do this?"

Again, I think the answer is yes. If I thought the new processes would lead to us crashing and burning, I would tell you. I think there could be some unanticipated potholes in 2012 despite our best efforts to plan for them, but believe we will be successful in 2012 and have the new processes down to repeatable routines by 2014.

Therefore, as the administrator who will implement these changes in the largest election office in the state, I stand ready to do so should this bill become law as proposed.

Thank you for your time and consideration of these comments.

Johnson County Election Office



Brian D. Newby
Election Commissioner

TESTIMONY BEFORE THE HOUSE ELECTIONS COMMITTEE RE: HB 2437

Wednesday, February 1, 2012

Members of the Committee:

A year ago yesterday, I testified before this committee regarding House Bill 2067.

My primary message during that testimony was that after reviewing the bill's requirements, I was confident that we could implement the provisions of the bill.

What I didn't anticipate was the wrinkle we have now, where part of the bill passed in one timeframe and part goes into effect later.

"Proof of citizenship when registering, proof of ID when voting," is a simple message.

Toss in the element of time, and the message becomes complicated. That may sound subtle, but every added word when explaining the changes invites a new fork in the road for confusion.

Voters have heard of the SAFE Act. They've heard of citizenship verification and voter ID. Many remember how first-time voters were required to show ID.

When speaking with voters and community groups, I have learned that the delineation of citizenship and voter ID becomes more confusing than it might otherwise be. Maybe it's just the way I'm communicating it, but the element of half of the law not going into effect until 2013 causes a pause and more questions.

Now, I understand that it's not reasonable to think that you would construct the law so that it's first and foremost easy to administer in Johnson County, but the administration should be a factor. That was my point last January and it remains my point now.

In fact, when I learned that there was a possibility, after the SAFE Act was signed into law, that the effective date of citizenship verification—after being moved to 2013—might come

Case 1:16-cv-00236-RJL Document 11-9 Filed 02/17/16 Page 6 of 6
up on the Senate floor still during the 2011 session, I called one of our Johnson County senators to tell her my support of such a change.

I was told that such a change wouldn't come up, and I closed the call by saying, "If it does, we would like the date changed."

That motion did indeed come up, and it didn't pass.

I recount that situation to stress that the rationale for concurrent implementation of the provisions was first expressed by me 9 months ago. I wanted—and still do want—the date to be effective in 2012 because I think it would reduce the complexity when communicating the changes.

Further, we have a built-in outreach method right now because voters are coming to us. They call us. They come to our website. They come to our outreach meetings. They do this because of the heightened interest in a presidential election year.

This is our chance to create a simple message rather than complicate the message with staggered implementation dates. When they come to our site, all they care about is 2012. We could animate in bold coloring information about 2013, but human nature will be to tune it out and focus on the immediate. And, if we try to squeeze in some 2013 talk through Twitter and other communications, we risk confusion during the 2012 election cycle.

So, it's my belief that delaying citizenship verification created a short fuse for communication to voters. When the November 2012 election ends, election activity doesn't end. We'll have a primary in February 2013 and a countywide general election in April. The primary is not small, averaging 140,000 voters over the last three primaries.

We don't have an outreach budget and we rely on the vehicles we have in place. Our website will be visited more than any other county website in 2012. We have a throng of voters coming to us, and this is our chance—in 2012--to communicate the changes.

I know the House approved the bill in 2011, and I'm respectfully asking that the House again pass this bill to align the implementation dates and take advantage of built-in outreach effect we will have in 2012.

Thank you for your time and consideration of these comments.

EXHIBIT

8

Johnson County Election Office



Brian D. Newby
Election Commissioner

Comments Related to EAC-2013-0004

Friday, January 3, 2014

As an election administrator serving more than 370,000 voters in Kansas, I have a strong interest in the outcome of the above-referenced document number pertaining to the Election Assistance Commission's [Notice and Request for Public Comment on State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form.](#)

I respectfully request that the voter registration form maintained for Kansans by the Election Assistance Commission (EAC) be modified to the full extent previously requested by the Kansas Secretary of State. The Secretary of State first requested this change to the National Voter Registration Mail Application Form in a letter to the EAC on August 9, 2012. This change request was among three changes requested based upon Kansas law.

In reviewing the correspondence between the Secretary's office and the EAC, I believe two of the changes were made and this item, related to citizenship, was not made because it "appears to have broad policy impact and would require consideration and approval by the EAC Commissioners," according to an October 11, 2012, response to the Secretary of State's office by Alice Miller, EAC Chief Operating Officer and Acting Executive Director.

No doubt, proof of voter citizenship may have policy impacts, and the change in Kansas law to require proof of citizenship for new registrants has resulted in new procedures adopted by our office. My comments here are not intended to weigh the benefits and drawbacks of this policy, or support or criticize the law in any way, but I do feel compelled to stress that this policy change is now law in Kansas, passed by the legislature and signed into law by Governor Sam Brownback.

A policy review of Kansas law does not seem to be an appropriate reason to avoid making this change to the form. If a legal review of the law is necessary, to consider if the Kansas law is consistent with federal

election law, I would think that would be done, and have been done, by the United States Department of Justice. The bill was signed into law nearly three years ago and, to my knowledge, has not received a federal court challenge. Regardless, it seems this type of review would be outside of the direct scope of the EAC.

As a practical matter, non-approval of this requested change, combined with legal interpretation of the recent Supreme Court decision, *Arizona v. Inter Tribal Council*, has left Kansas election administrators to track registrants who have completed this federal form, that is not compliant with Kansas law, separately from those who have completed the registration form in Kansas that is compliant with Kansas law. The implication for administrators is that only those registrants who have completed the Kansas form are eligible to vote in all Kansas races and contests.

By not acting upon the Secretary of State's request, the EAC actually has brought to light a broader policy issue. Specifically, there is no federal requirement for local jurisdictions to conduct federal elections. Unless the federal form mirrors that of the legal state form, the natural outcome of a separate federal policy is the one we are left with—where we have two categories of voters.

As an administrator, I believe this creates unnecessary confusion on the part of voters and introduces new training issues for us with our election workers. I believe this confusion to be unnecessary because the reluctance to make the change—as I understand it—is not based upon a legal consideration of the Kansas law but rather a definition of “policy implications” that doesn't seem germane to the request made.

I respectfully ask that the EAC immediately take action to modify the registration form as requested by the Kansas Secretary of State in 2012. If there is a need for a separate federal legal review of the Kansas law itself, I support that. I'm assuming such a review has been conducted, however, and, regardless, do not believe that review falls under the role of the EAC. Therefore, I ask that the EAC assist us by enabling one, consistent, and lawful method of voter registration for Kansans.

Thank you for your time and consideration of these comments.

EXHIBIT

9

KRIS W. KOBACH
Secretary of State



RECEIVED
U.S. ELECTION ASSISTANCE COMMISSION
Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564
2015 NOV 18 PM 3:02

STATE OF KANSAS

November 17, 2015

Brian Newby
Executive Director
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

Dear Mr. Newby,

On October 2, 2015, Kansas Administrative Regulation (“KAR”) 7-23-15 was updated to require county election officers to designate a voter registration application as incomplete if it lacks information required by law, including satisfactory evidence of United States Citizenship, and to maintain a list of incomplete applications for voter registration. KAR 7-23-15(a). A voter may complete the voter registration application by providing the absent information within 90 days after the application was received by the county election office. KAR 7-23-15(b). If an applicant does not complete his voter registration application within the 90 day period, the applicant must then submit a new, completed application to register to vote. KAR 7-23-15(c).

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

We request the insertion of an additional bullet point after the third bullet point in the “Signature” section of the Kansas state-specific instructions: “have provided a document, or copy thereof, demonstrating United States citizenship within 90 days of filing the application with the secretary of state or applicable county election officer.”

We also suggest inserting an additional bullet point after the final bullet point under the “Signature” section: “Acceptable documents demonstrating United States citizenship as required by K.S.A. § 25-2309(l) include the following:

- (1) A driver’s license or non-driver state identification card indicating on its face that the holder has provided satisfactory proof of United States citizenship;
- (2) A birth certificate indicating birth in the United States;
- (3) Pertinent pages of a valid or expired United States passport identifying the applicant and the applicant’s passport number;
- (4) A naturalization document indicating United States citizenship;
- (5) A document issued by the federal government pursuant to the Immigration and Naturalization Act of 1952, and amendments thereto, indicating United States citizenship;

- (6) A Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number;
- (7) A consular report of birth abroad of a citizen of the United States;
- (8) A certificate of citizenship issued by the U.S. Citizenship and Immigration Services;
- (9) A certificate of report of birth issued by the U.S. Department of State;
- (10) An American Indian card with KIC classification issued by the U.S. Department of Homeland Security;
- (11) A final adoption decree showing the applicant's name and United States birthplace;
- (12) An official U.S. military record of service showing the applicant's United States birthplace;
- (13) An extract from a U.S. hospital record of birth created at the time of the applicant's birth indicating the applicant's United States birthplace.

If one does not possess any of the listed documents, the person may alternatively prove his or her citizenship through the process described in KSA § 25-2309(m).”

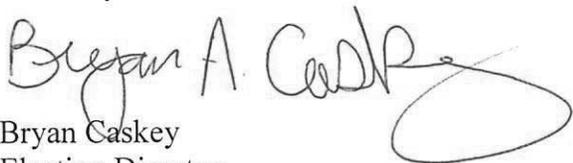
Additionally, our office is providing the attached spreadsheet which identifies eighteen noncitizens who registered or attempted to register in Sedgwick County, Kansas—just one of Kansas's 105 counties. Prior to the January 1, 2013, effective date of the Kansas requirement that a voter registration applicant provide proof of citizenship to register, at least seven noncitizens successfully registered to vote in Sedgwick County—one of which voted in four different Kansas elections. Sedgwick County officials learned of most of these noncitizen registrants many years after they registered because Sedgwick County officials attend naturalization ceremonies to register new citizens to vote.

Fortunately, the Kansas proof-of-citizenship requirement has succeeded in enabling Sedgwick County to prevent similar registrations. After the proof of citizenship law went into effect on January 1, 2013, at least eleven noncitizens were prevented from becoming registered voters. These eleven applicants attempted to register but failed to provide proof of citizenship. At least one attempted to register using the National Mail Voter Registration Form. When Sedgwick County officials contacted these eleven applicants, it was learned that they were not United States citizens. Thus, the proof-of-citizenship requirement of Kansas's state voter registration form has proven effective in preventing noncitizens from registering to vote. As they are currently worded, the Kansas-specific instructions on the National Mail Voter Registration Form include no such requirement; consequently, noncitizens can use that form to unlawfully register to vote in federal elections.

The attached spreadsheet demonstrates that a proof-of-citizenship instruction on the Kansas State Specific Instructions of the National Voter Registration Form is necessary to enable Kansas county election officers to assess the eligibility of an applicant, because a mere oath will not suffice to effectuate Kansas's citizenship requirement. The State of Kansas has attempted to use other mechanisms to prevent noncitizens from voting, such as attempting to identify noncitizens on the voter rolls and determining if the voter rolls include the names of individuals who decline jury duty because they are noncitizens. These alternative mechanisms are fraught with problems and have been wholly ineffective in ensuring that noncitizens do not become registered to vote in

Kansas. Accordingly, we request the revisions to the Kansas-specific instructions on the National Mail Voter Registration Form detailed above.

Sincerely,

A handwritten signature in black ink that reads "Bryan A. Caskey". The signature is written in a cursive style with a large, looping flourish at the end.

Bryan Caskey
Election Director
Kansas Secretary of State's Office

SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR WERE SUCCESSFULLY PREVENTED FROM REGISTERING AFTER 1/1/2013

Date original registration application submitted	Reg ID	Source of Registration	Current Citizenship Status	Date of Naturalization	Voted	Note
ALIENS WHO SUCCESSFULLY REGISTERED						
4/16/2003	4296515	DMV paper address change	Citizen	2/27/2015	No	Was registered for nearly 12 years prior to being a citizen. Was sent ballot for 4 elections but never voted.
10/12/2004	1447321	By Mail - Paper	Non Citizen	NA	Yes	Voted 4 times, GN2004, CG2005, SP2007, GN2008. Voter called Sedgwick County Election office because while applying to become a citizen of the United States she realized she had voted and was registered to vote here in Sedgwick County. She was requesting her voting history (she has voted 4 times) and a voter ID card along with a cancellation form. Her statement was that she "was a permanent resident of the U.S. and did not know she wasn't allowed to vote until after 2008 when one of her friends told her she couldn't, she then stopped voting."
10/07/2006	5053234	Voter Registration Drive	Citizen	9/11/2015	No	Was registered for over 8 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
10/15/2006	5055911	Voter Registration Drive - Paper	Citizen	1/16/2015	No	Was registered for over 8 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
10/19/2006	5063593	Mandated Public assistance - Paper	Citizen	3/28/2014	No	Was registered for over 7 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
8/30/2010	5401038	Motor Vehicle Offices - Electronic	Citizen	7/17/2015	No	Was registered for almost 5 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
6/5/2010	5381681	Motor Vehicle Office	Citizen	10/2/2015	No	Was registered for over 5 years before becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
ALIENS WHO ATTEMPTED TO REGISTER						
2/13/2013	5613774	DMV Online - Electronic	Non Citizen	NA	No	Sedgwick County Election Office contacted applicant via phone on 06/27/2013. He admitted that he was not a citizen.
8/20/2013	5637865	Motor Vehicle Offices - Electronic	Citizen	9/27/2013	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizen at naturalization ceremony.
1/24/2014	5657157	Motor Vehicle	Non Citizen	NA	No	Applicant returned Proof of Citizenship notice with note saying

SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR WERE SUCCESSFULLY PREVENTED FROM REGISTERING AFTER 1/1/2013

	Offices - Electronic	Non Citizen	NA		that the applicant was not a citizen.
2/20/2014	5660352 Federal Form	Non Citizen	NA	No	Applicant attempted to register even though she was a noncitizen. Applicant signed affirmation of United States citizenship but failed to check boxes on the form. Sedgwick County Election Office called the applicant, and the applicant stated that she was not a United States citizen.
2/21/2014	5660218 Motor Vehicle Offices - Electronic	Non Citizen	NA	No	Applicant called Sedgwick County Election office to report that he is not a citizen. 04/21/2014.
3/4/2014	5662650 Motor Vehicle Offices - Electronic	Citizen	9/14/2014	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
4/23/2014	5668920 Motor Vehicle Offices - Electronic	Non Citizen	NA	No	Applicant's niece called Sedgwick County Election office to report applicant is not a citizen, Sedgwick County Election office mailed a cancelation form, but hasn't received it back. Due to the notification not being from the applicant, this file was left pending as "incomplete."
8/6/2014	5685971 Motor Vehicle Offices - Electronic	Citizen	1/16/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizen at naturalization ceremony.
4/14/2015	5733764 Mandated Public Assistance Agency	Citizen	9/18/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election office discovered this when registering new citizens at naturalization ceremony.
6/12/2015	5735793 Motor Vehicle Offices - Electronic	Citizen	11/13/2015	No	Applicant attempted to register prior to becoming a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at naturalization ceremony.
9/23/2015	5642186 Motor Vehicle Office- Electronic	Non Citizen	NA	No	Applicant came into the Sedgwick County Election Office on 10/2/2015 to provide proof of citizenship. Applicant provided a "Residential Alien" card. Sedgwick County Election Office asked if applicant was a U.S. Citizen. Applicant said No.

EXHIBIT

10



U.S. Election Assistance Commission
1335 East-West Highway, Suite 4300
Silver Spring MD 20910
(301)563-3919

November 19, 2015

Mr. Bryan Caskey
Election Director
Kansas Secretary of State's Office
Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594

Dear Mr. Caskey:

Thank you for your recent request to this office regarding modification of instructions relative to Kansas on the Federal mail voter registration form. Please be advised that we are currently reviewing your request. Once the decision on your request is finalized, I will notify you immediately. Should you have any questions, please feel free to contact me or Karen Lynn-Dyson, Division of Research, Policy and Programs at klynndyson@eac.gov or 301-563-3935. Ms. Lynn-Dyson is responsible for overseeing NVRA issues in this office.

Sincerely,

A handwritten signature in black ink, appearing to read "BDN", with a large, stylized flourish extending from the end.

Brian D. Newby
Executive Director

cc: Ms. Karen Lynn-Dyson, Director
Division of Research, Policy and Programs

EXHIBIT

11

STROOCK

VIA FEDERAL EXPRESS & E-MAIL

December 21, 2015

Mr. Brian Newby
Executive Director
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, Maryland 20910

Dear Mr. Newby:

We represent the League of Women Voters of the United States, League of Women Voters of Kansas, and League of Women Voters of Arizona (the “League”), which were Intervenor in *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 289 (U.S. June 29, 2015) (“*Kobach*”). We write regarding the letter submitted to your office dated November 17, 2015 by Kansas Election Director Bryan Caskey. In Mr. Caskey’s letter, Kansas requests—for the fifth time—that the Election Assistance Commission (“EAC”) modify the national mail-in voter registration form (“the Federal Form”) in order to require documentary proof of citizenship. We urge you to inform Kansas that the EAC will not grant this request, the grounds for which the EAC and the U.S. Court of Appeals for the Tenth Circuit have fully considered and rejected.

In its letter, Kansas references its statutory requirement of documentary proof of citizenship to register to vote and includes evidence purporting to show noncitizens registering or voting. As you know, the EAC already considered and rejected the same request, with the same type of supposed evidence, in a 46-page memorandum of decision following notice and comment. Memorandum of Decision Concerning State Requests, Docket No. EAC-2013-0004 (Jan. 17, 2014). Kansas sought judicial review of the EAC’s determination under the Administrative Procedure Act, and in *Kobach*, the Tenth Circuit affirmed the EAC’s decision. Every argument Kansas makes has already been considered and rejected by both the EAC and the Tenth Circuit. This request should be denied on the same grounds.

Kansas’s new Administrative Regulation 7-23-15, which purports to interpret the state election code, does not make the state’s new request different in any material

Mr. Brian Newby
December 21, 2015
Page 2

way. Now, as before, Kansas has a state requirement that applicants provide documentary proof of citizenship, which cannot be applied to Federal Form applicants because it violates the National Voter Registration Act. Indeed, as the enclosed correspondence indicates, we contacted the Secretary of State's office when this regulation was first proposed, and Kansas election officials informed us that K.A.R. 7-23-15 would *not* be applied to Federal Form applicants. We requested that this be clarified in the final regulation, but curiously it was not. Now, the state apparently seeks to accomplish through the back door what it could not through the front: the ability to unlawfully apply its proof-of-citizenship regulation—and by extension, its proof of citizenship statute—to the Federal Form.

Finally, we note that even if the EAC wished to begin reconsideration of Kansas's request, doing so would require a vote of the Commission. The EAC already has denied a nearly identical request by a 2-2 vote. *See* Election Assistance Comm'n, Public Meeting (Mar. 20, 2008). Any different treatment of Kansas's latest request would constitute a change of policy and arise to the level of official EAC action, which must be approved by at least *three* Commissioners under HAVA. 52 U.S.C. § 20928. Although the EAC has delegated day-to-day maintenance of the Federal Form to the Executive Director, the Tenth Circuit recognized that such maintenance must be "consistent with the NVRA and EAC Regulations and Policies." *Kobach*, 772 F.3d at 1190 (quoting EAC, Roles and Responsibilities of the Commissioners and Executive Director of the U.S. Election Assistance Commission, Sept. 15, 2008). Clearly, the current Executive Director cannot approve Kansas's latest request. Indeed, application of EAC policies and procedures, as well as the *Kobach* case, mandate that the Executive Director summarily deny the request as an administrative matter. Moreover, even if three Commissioners somehow wished to approve the request, the EAC may only implement new modifications to the Federal Form through a notice-and-comment rulemaking, in accordance with the NVRA. 52 U.S.C. §20508(a)(1). As the Commission previously has acknowledged, the Administrative Procedure Act governs proposed changes to EAC regulations and the Federal Form. 59 Fed. Reg. 32,323, and 74 Fed. Reg. 37,520.

We ask you to enhance the stature of the Election Assistance Commission through consistent application of the law and therefore urge the EAC to deny Kansas's *fifth* request.

Mr. Brian Newby
December 21, 2015
Page 3

Please include this letter in the record of any proceedings on the Kansas request.

Very truly yours,



Michael C. Keats, Esq.
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038-4982
(212) 805-5533



Jonathan Brater, Esq.
Wendy Weiser, Esq.
Brennan Center for Justice
at New York University School of Law
161 Avenue of the Americas
12
New York, New York 10013
(646) 292-8373

(Enclosure)

cc: Cliff Tatum, General Counsel
Lloyd Leonard, League of
Women Voters of the United States

September 1, 2015

BY EMAIL

Desiree Taliaferro
Director of Administrative Services
Office of the Secretary of State
Memorial Hall
Room 140
120 S.W. 10th Avenue
Topeka, Kansas 66612-1594
desiree.taliaferro@sos.ks.gov

Dear Ms. Taliaferro:

We represent the League of Women Voters of the United States, League of Women Voters of Kansas, and League of Women Voters of Arizona (the “League”), as Intervenors in *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 289 (U.S. June 29, 2015). We write with respect to the Secretary of State’s Notice of Hearing on Proposed Administrative Regulations, dated June 25, 2015 (the “Notice”), proposing certain amendments to Kansas Administrative Regulation 7-23-14, and the adoption of Kansas Administrative Regulation 7-23-15, in both cases relating to Kansas’s proof of citizenship requirements. Specifically, we wish to confirm our understanding of the effect of proposed K.A.R. 7-23-15 on applicants who use the national mail voter registration form (“Federal Form”).

By its plain terms, proposed K.A.R. 7-23-15 could be construed as requiring—irrespective of whether a voter submits a registration application using *either* the Federal Form *or* Kansas’s state voter registration form—a county election officer to designate an application as “incomplete,” if the applicant does not provide “satisfactory evidence of United States citizenship.” In that event, the applicant is to be added to a “list of incomplete applications for voter registration,” and the county election officer is required to reject the voter registration application if the applicant does not submit sufficient evidence within 90 days.

Applying proposed K.A.R. 7-23-15 to voter applications submitted on the Federal Form would violate the National Voter Registration Act. As the Supreme Court held in *Arizona v. Inter-Tribal Council of Arizona*, 133 S. Ct. 2247 (2013) (“*ITCA*”), States must “accept and use” the Federal Form for voter registration, regardless of any additional state law requirements.

ITCA further instructed that if a State wanted to add its own documentation requirements to the Federal Form, the State first needed to submit that request to the U.S. Election Assistance Commission (“EAC”), and then challenge any denial of the request under the Administrative Procedure Act. Here, the EAC rejected the Secretary of State’s request to amend the Federal Form to add Kansas’s evidentiary requirements, and the United States Court of Appeals for the Tenth Circuit upheld the EAC’s decision in *Kobach v. U.S. Election Assistance Commission*. Accordingly, Kansas is required as a matter of federal law to “accept and use” the Federal Form without adding any additional requirements.

We understand that the Secretary has no intention of facially violating the NVRA, the Supreme Court’s decision in *ITCA*, and the Tenth Circuit’s order in *Kobach*, by imposing the requirements of K.A.R. 7-23-15 on Federal Form applicants. Indeed, during an August 24, 2015 phone conversation with Assistant Secretary of State Eric Rucker and Deputy Assistant Secretary of State for Elections and Legislative Matters Bryan Caskey, the Secretary’s Office confirmed that K.A.R. 7-23-15 was not intended to apply to Federal Form applicants.

It is our understanding that if proposed K.A.R. 7-23-15 is adopted, Federal Form applicants who do not provide documentary proof of citizenship will *not* be placed on an incomplete list and will *not* be removed after 90 days for failure to provide these documents. We acknowledge that the state may place some designation on such individuals’ registration records to indicate they will be permitted to vote only in federal elections and that they may become permitted to vote in state and local elections if they provide documentary proof of citizenship.¹ Accordingly, we respectfully request that the final regulation be amended to *expressly* state that the regulation does not apply to Federal Form applicants, and only applies to applicants who utilize Kansas’s state voter registration form. We further request that the Secretary include clear instructions to county election officials to ensure that eligible Kansans are informed that they may register in federal elections without documentary proof of citizenship by using the Federal

¹ Our clients do not endorse the state’s maintenance of dual registration rolls for state and federal elections; we acknowledge only that should the state continue to operate this system, it may use certain designations.

Form, and that Federal Form applicants are fully registered for the purpose of voting in federal elections regardless of this regulation. The League reserves its rights, claims and remedies in the event that that the text of any final rule fails to clarify that K.A.R. 7-23-15 does not apply to Federal Form applicants.

Very truly yours,

/s/ Michael C. Keats

Michael C. Keats
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, NY 10036

/s/ Susan Davies

Susan M. Davies
KIRKLAND & ELLIS LLP
655 15th Street, NW
Washington, DC 20005

/s/ Wendy R. Weiser

Wendy R. Weiser
BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW
161 Avenue of the Americas, 12th Floor
New York, NY 10013

/s/ David G. Seely

David G. Seely
FLEESON, GOOING, COULSON & KITCH LLC
1900 EPIC Center
301 N. Main
Wichita, KS 67202

Cc. Eric Rucker
Bryan Caskey
Garrett Roe

EXHIBIT

12



December 24, 2015

Via Email and U.S. Mail

Brian D. Newby, Executive Director
U.S. Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, Maryland 20910

Dear Mr. Newby:

Project Vote¹ understands that Kansas has again asked the Election Assistance Commission (EAC) to alter the national mail voter registration application form (“federal form”) to require Kansas applicants to provide documentary proof of citizenship when registering with the form. For the reasons cited in this letter, Kansas’s request should be summarily rejected for the following reasons:

1. The latest request to modify the form to require documentary proof of citizenship is improper, as the proposed change was recently considered in depth and rejected. Specifically, in 2014, the EAC conducted a notice and comment process regarding this very same issue, and rejected the request in a 46-page Memorandum. The EAC’s decision was subsequently affirmed by the U.S. Court of Appeals for the Tenth Circuit as consistent with the NVRA and the Administrative Procedure Act (APA). *Kobach v. United States Election Assistance Commission*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2891 (June 29, 2015) (“*Kobach*”).
2. Granting any request to modify the form to require documentary proof of citizenship would require notice and comment rulemaking for two separate reasons:

¹ Project Vote, Inc. is a national nonpartisan, nonprofit 501(c)(3) that works to build an electorate that accurately represents the diversity of America’s citizenry. Through advocacy, litigation, and technical assistance, Project Vote fights to make sure that every eligible citizen is able to register, vote, and cast a ballot that counts. Project Vote was an Intervenor in *Kobach v. United States Election Assistance Commission*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2891 (June 29, 2015) (“*Kobach*”).

Project Vote Letter to EAC
December 24, 2015

a. Such a change would require a revision to 11 C.F.R. § 9428. As Project Vote previously noted in conjunction with Kansas's last request,² such a substantive revision of 11 C.F.R. § 9428 can only be made through formal notice-and-comment rulemaking and approved by three EAC Commissioners. The current instructions on the federal form conform to 11 C.F.R. § 9428.4. Neither 11 C.F.R. § 9428.4 (nor the current instructions implementing it) state that an applicant must also provide documentary evidence of their citizenship with the federal form. The EAC previously determined, and the Commission affirmed, that the current instructions prohibit states from doing so.

b. Making this change would reverse a recent, substantive decision by the EAC, and the APA requires that when an agency reverses a previous position, it is a substantial change requiring notice and comment. *See, e.g., Chamber of Commerce of U.S. v. U.S. Dep't of Labor*, 174 F.3d 206, 211-13 (D.C. Cir. 1999) (issuance of substantive rule required notice-and-comment rulemaking); *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Sullivan*, 979 F.2d 227, 241 (D.C. Cir. 1992) ("the law seems clear that when an agency adopts a new construction of an old rule that repudiates or substantially amends the effect of the previous rule on the public . . . the agency must adhere to the notice and comment requirements of § 553 of the APA."). The EAC's January 2014 decision following a notice and comment period addressed Kansas's request in depth and rejected it. It determined that the request was contrary to the NVRA's text, and would undermine the NVRA's purpose. Memorandum of Decision Regarding State Requests, Docket No. EAC 2013-0004 (Jan. 17, 2014). The EAC's decision was affirmed by the U.S. Court of Appeals for the Tenth Circuit as consistent with the NVRA. *Kobach*, 772 F.3d at 1194-1198. Thus, because Kansas's request has recently been addressed and denied, any decision to now grant Kansas's request would require a notice and comment rulemaking.

3. Granting Kansas's request would be inconsistent with the National Voter Registration Act and therefore would violate the APA as arbitrary and capricious and contrary to law. Any decision to grant Kansas's request to add documentary proof of citizenship to the federal form would be arbitrary and capricious within the meaning of the APA for at least two reasons. First, it would reverse a substantive decision without adequate reason. *Eagle Broad. Grp., Ltd. v. FCC*, 563 F.3d 543, 551 (D.C. Cir. 2009) ("an agency's unexplained departure from precedent must be overturned as arbitrary and capricious" (citations omitted)) (quoted in *Kobach*, 772 F.3d at 1198). Second, the interpretation of the NVRA Kansas is requesting is contrary to law, specifically the National Voter Registration Act, for the reasons described in Project Vote's comment of January 4, 2014.³ Should the EAC reverse course and change its response to Kansas's request to add documentary proof of citizenship to the federal form from rejecting the request to allowing it, Project Vote may be forced to take legal action under the APA in federal district court in the District of Columbia.

² Letter from Brian Mellor, General Counsel, Project Vote, to Alice Miller, Acting Executive Director, U.S. Election Assistance Commission (July 19, 2013) (Attached as Exhibit A).

³ Comment of Project Vote, Docket No. EAC 2013-0004 (Attached as Exhibit B).

*Project Vote Letter to EAC
December 24, 2015*

Thank you for your consideration.

Sincerely,

Brian Mellor 

Brian Mellor
General Counsel
Project Vote

EXHIBIT

13



U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

January 29, 2016

Bryan Caskey
Election Director
Kansas Secretary of State's Office
Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594

Dear Mr. Caskey:

This letter pertains to your November 17, 2015, correspondence requesting that the EAC adjust its instructions to the National Mail Registration Form to be consistent with recent changes in Kansas state law and administrative regulations

The changes have been made and are posted on the EAC website.

The changes and additions, *in italics*, made to the Federal form State-Specific Instructions for the State of Kansas, are:

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 provided a document, or copy thereof, demonstrating United States citizenship within 90 days of filing the application with the secretary of state or applicable county election officer*
- 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 by a court of competent jurisdiction
- *Acceptable documents demonstrating United States citizenship as required by K.S.A. §25-2309 (1) include the following:*
 - (1) *A driver's license or non-driver state identification card indicating on its face that the holder has provided satisfactory proof of United States citizenship;*
 - (2) *A birth certificate indicating birth in the United States;*
 - (3) *Pertinent pages of a valid or expired United States passport identifying the applicant and the applicant's passport number;*

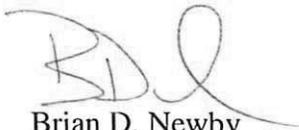
- (4) A naturalization document indicating United States citizenship;*
- (5) A document issued by the federal government pursuant to the Immigration and Naturalization Act of 1952, and amendments thereto, indicating United States citizenship;*
- (6) A Bureau of Indian Affairs card number, tribal treaty card number; or tribal enrollment number;*
- (7) A consular report of birth abroad of a citizen of the United States;*
- (8) A certificate of citizenship issued by the U.S. Citizenship and Immigration Services*
- (9) A certificate of report of birth issued by the U.S. Department of State;*
- (10) An American Indian card with KIC classification issued by the U.S. Department of Homeland Security;*
- (11) A final adoption decree showing the applicant's name and United States birthplace;*
- (12) An official U.S. military record of service showing the applicant's United States birthplace;*
- (13) An extract from a U.S. hospital record of birth created at the time of the applicant's birth indicating the applicant's United States birthplace.*

If one does not possess any of the listed documents, the person may alternatively prove his or her citizenship through process described in K.S.A. §25-2309(m).

If the changes do not accurately reflect your request, please notify me immediately. Further, we have begun a systematic process with all states to update State-Specific Instruction Changes regularly. Please look for a separate mailing from us in the coming days and notify us if any additional State-Specific Instructions are in need of modernization or further calibration with your procedures.

If you have any questions on this matter, please do not hesitate to contact me at 301-563-3959 or at bnewby@eac.gov.

Sincerely,

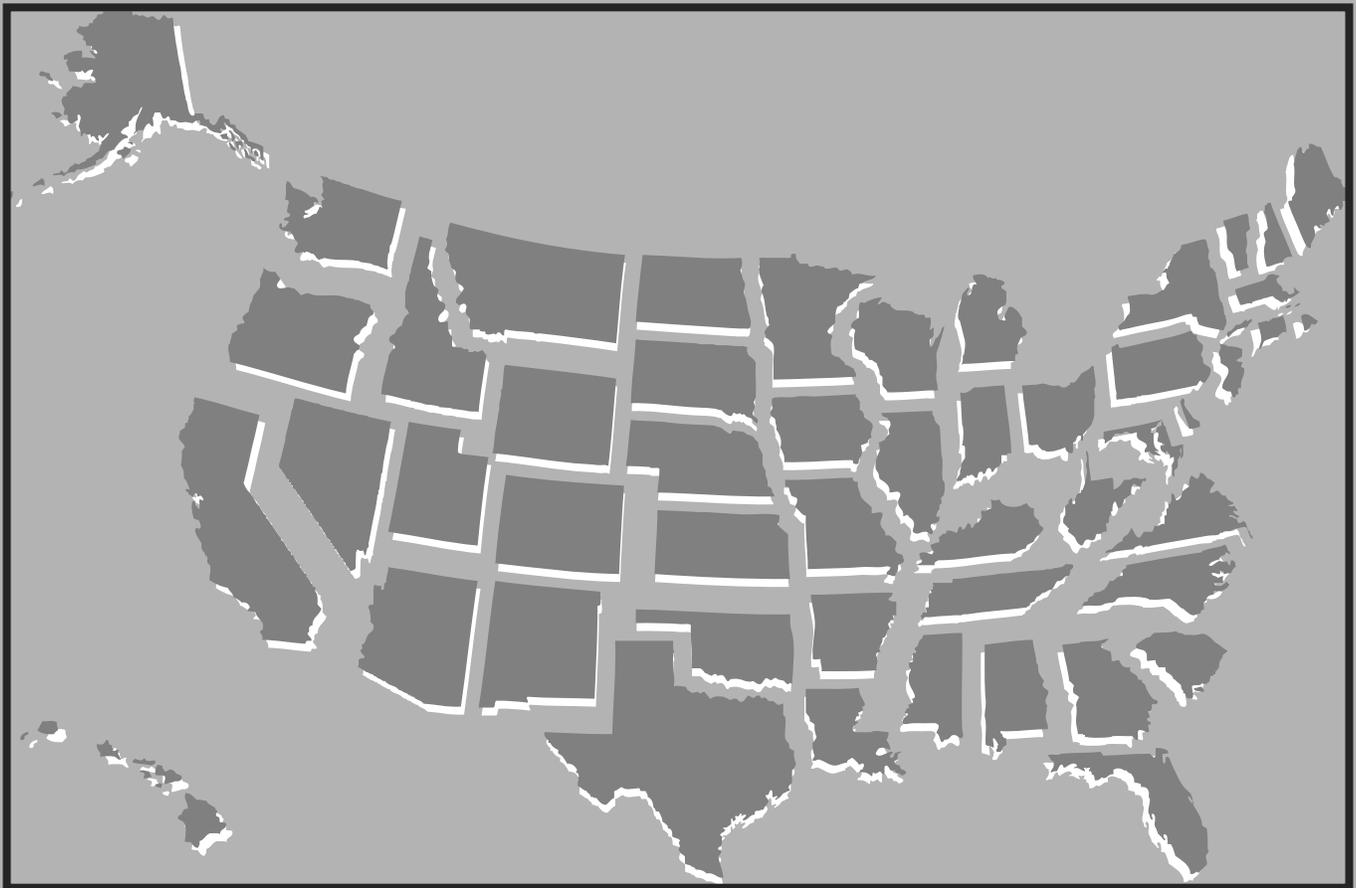


Brian D. Newby
Executive Director

EXHIBIT

14

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 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.

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 If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)	This space for office use only.
--	---------------------------------

1	<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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2	Home Address	Apt. or Lot #	City/Town	State	Zip Code
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3	Address Where You Get Your Mail If Different From Above	City/Town	State	Zip Code
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4	Date of Birth _____ Month Day Year	5	Telephone Number (optional)	6	ID Number - (See item 6 in the instructions for your state)
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7	Choice of Party (see item 7 in the instructions for your State)	8	Race or Ethnic Group (see item 8 in the instructions for your State)	
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9	I have reviewed my state's instructions and I swear/affirm that: ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ 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.	<div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p style="text-align: center;">Please sign full name (or put mark) ▲</p> <p>Date: </p> <p style="text-align: center; margin-left: 100px;">Month Day Year</p>
----------	--	---

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?

A	<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
----------	--	-----------	------------	----------------	--

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	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.

C	<ul style="list-style-type: none"> ■ Write in the names of the crossroads (or streets) nearest to where you live. ■ Draw an X to show where you live. ■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark. 	NORTH ↑						
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If the applicant is unable to sign, who helped the applicant fill out this application? Give name, address and phone number (phone number optional).

D	
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Mail this application to the address provided for your State.

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 If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	This space for office use only.
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1	<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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2	Home Address	Apt. or Lot #	City/Town	State	Zip Code
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3	Address Where You Get Your Mail If Different From Above	City/Town	State	Zip Code
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4	Date of Birth	5 Telephone Number (optional)	6	ID Number - (See item 6 in the instructions for your state)
	_____ Month Day Year			
7	Choice of Party <small>(see item 7 in the instructions for your State)</small>	8	Race or Ethnic Group <small>(see item 8 in the instructions for your State)</small>	_____

9 I have reviewed my state's instructions and I swear/affirm that: ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ 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.	<div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p style="text-align: center;">Please sign full name (or put mark) ▲</p> <p>Date: _____ / _____ / _____ Month Day Year </p>
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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?

A	<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	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.

C	■ Write in the names of the crossroads (or streets) nearest to where you live. ■ Draw an X to show where you live. ■ Use a dot to show any schools, churches, stores, or other landmarks near where you live, and write the name of the landmark.	NORTH ↑									
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● Grocery Store	_____										
Woodchuck Road	_____										
Public School ●	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).

D	
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Mail this application to the address provided for your State.

State Instructions

Alabama

Updated: 02-01-2016

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

6. ID Number. If you have one, you must provide your Alabama driver's license number or Alabama nondriver identification card number. If you do not have an Alabama driver's license or nondriver identification card, you must provide the last 4 digits of your Social Security number. If you have not been issued any of these numbers you must write the word "NONE" and a unique identifier will be provided for you.

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. The county board of registrars 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.
- 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 involving moral turpitude (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.

State Instructions

§ 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.

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 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

State Instructions

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

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

State Instructions

Mailing address:

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

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: 02-01-2016

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.

State Instructions

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
- 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
- be found eligible to vote by supplying satisfactory evidence of U.S. citizenship

Mailing address:

Elections Division
Office of the Secretary of State
2 Martin Luther King Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334

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

State Instructions

Mailing address:

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

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.

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: 02-01-2016

Registration Deadline — Postmarked or delivered 21 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 provided a document, or copy thereof, demonstrating United States citizenship within 90 days of filing the application with

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the secretary of state or applicable county election officer

- 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 by a court of competent jurisdiction

- acceptable documents

demonstrating United States citizenship as required by K.S.A.

§ 25-2309(l) include the following:

- (1) a driver's license or non-driver state identification card indicating on its face that the holder has provided satisfactory proof of United States citizenship;
- (2) a birth certificate indicating birth in the United States;
- (3) pertinent pages of a valid or expired United States passport identifying the applicant and the applicant's passport number;
- (4) a naturalization document indicating United States citizenship.
- (5) a document issued by the federal government pursuant to the Immigration and Naturalization Act of 1952, and amendments thereto, indicating United States citizenship;
- (6) a Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number;
- (7) a consular report of birth abroad of a citizen of the United States;
- (8) a certificate of citizenship issued by the U.S. Citizenship and Immigration Services;
- (9) a certificate of report of birth issued by the U.S. Department of State;

(10) an American Indian card with KIC classification issued by the U.S. Department of Homeland Security;

(11) a final adoption decree showing the applicant's name and United States birthplace;

(12) an official U.S. military record of service showing the applicant's United States birthplace;

(13) an extract from a U.S. hospital record of birth created at the time of the applicant's birth indicating the applicant's United States birthplace.

If one does not possess any of the listed documents, the person may alternatively prove his or her citizenship through the process described in K.S.A. § 25-2309(m).

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

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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.

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,

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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 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.

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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

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.

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

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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
- 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

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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.

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

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.

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).

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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: 06-19-2014

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 North Pearl Street, Suite 5
Albany, NY 12207-2729

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

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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

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

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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 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

State Instructions

Mailing address:

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

Tennessee

Updated: 06-19-2014

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, Seventh Floor
312 Rosa L. Parks Ave.
Nashville, TN 37243-1102

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
- 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

State Instructions

- 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. 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

State Instructions

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: 08-05-2013

Registration Deadline — Postmarked at least twenty days before the election; or completed in the office of the town, village, or city clerk up to 5:00 pm or the close of business whichever is later, on the Friday before the election; or completed at the polling place on Election Day

6. ID Number. Provide your driver license or DOT-issued ID card number. If you do not have a current and valid DOT-issued driver license or ID card, provide the last 4 digits of your social security 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 and have resided at the registration address for at least 28 days.
- be 18 years old
- not have been convicted of treason, felony or bribery, or if you have, your civil rights have been restored
- 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:

Government Accountability
Board
212 East Washington Avenue,
Third Floor
P.O. Box 7984
Madison, WI 53707-7984

Wyoming

Updated: 03-01-2006

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

EXHIBIT

15

STATE OF ALABAMA



J.S. HICKS
COMMISSIONER

2014 DEC 22 PM 12:24

OFFICE OF THE SECRETARY OF STATE

JIM BENNETT
SECRETARY OF STATE

P.O. Box 5616
MONTGOMERY, AL 36103-5616

December 18, 2014

The Honorable Thomas Hicks
The Honorable Matthew Masterson
The Honorable Christy McCormick
U.S. Election Assistance Commission
1335 East West Highway
Suite 4300
Silver Spring, MD 20910

Re: NVRA Form State Instructions

Dear Commissioners:

As the chief election official for the State of Alabama, I am writing to formally request that the Election Assistance Commission revise the state-specific instructions for Alabama on the National Voter Registration Application form. The requested changes are as follows:

1. In the paragraph titled "**Registration Deadline**," replace "ten" with "14." Alabama state law has been amended to change the voter registration deadline from the tenth day before an election to the 14th day before an election. See Code of Alabama 1975, section 17-3-50 (2014). In accordance with the new deadline, applications must be postmarked or delivered by the 15th day prior to the election.
2. In paragraph 6 titled **ID Number** please change the language to read as follows:

If you have one, you must provide your Alabama driver's license number or Alabama nondriver identification card number. If you do not have an Alabama driver's license or nondriver identification card, you must provide the last 4 digits of your Social Security number. If you have not been issued any of these numbers you must write the word "NONE" and a unique identifier will be provided for you.

Page Two

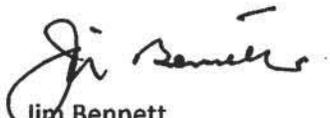
3. In paragraph 9 titled **Signature** please add the following language in accordance with Code of Alabama 1975, section 31-13-28:

To register in Alabama you must:

- be a citizen of the United States. The county board of registrars 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.
4. In paragraph 9 regarding felony convictions, please change the language to read as follows:
 - not have been convicted of a felony involving moral turpitude (or have had your civil and political rights restored.)

Since the information regarding documentation of U.S. citizenship and conviction of a felony involving moral turpitude is necessary to enable voter registrars to assess the eligibility of an applicant, I would appreciate your prompt attention to these requested changes. If you have any questions, please contact me.

Very truly yours,



Jim Bennett
Secretary of State

EXHIBIT

16



The Office of the Secretary of State

Brian P. Kemp

SECRETARY OF STATE

August 1, 2013

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

Dear Ms. Miller,

As the chief state election official for the State of Georgia, I am writing to request that the Election Assistance Commission ("EAC") revise the state-specific instructions for Georgia in the National Voter Registration Mail Application Form (the "Federal Form"). In addition to updating the mailing address for my office's Elections Division, the Federal Form needs to be altered to include information that the State of Georgia has deemed necessary to enable state election officials to assess the eligibility of an applicant and to administer voter registration.

Specifically, I am requesting that the EAC alter the state-specific instructions for Georgia in the Federal Form as follows:

1. In Georgia, a person is not qualified to vote unless such person is registered as an elector in the manner prescribed by Georgia law, a citizen of the State of Georgia and of the United States, and possess all other qualifications set by law. O.C.G.A. § 21-2-216(a). Act 143 of the 2009 Georgia General Assembly, codified at O.C.G.A. § 21-2-216(g), along with the implementing regulations contained in Ga. Comp. R. & Regs. r. 183-1-6-.06 and Ga. Comp. R. & Regs. r. 590-8-1-.02, directs applicants for voter registration to provide satisfactory evidence of United States citizenship so that the board of registrars can determine the applicant's eligibility. Upon the receipt of an application without satisfactory evidence of citizenship, the board of registrars shall accept the application and notify the applicant in writing of the requirement to provide satisfactory evidence of citizenship. Failure to respond to such request will result in the rejection of the application.

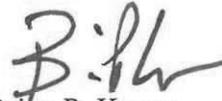
Accordingly, we request the insertion of an additional bullet after the last bullet in the "Signature" section with the following text: "be found eligible to vote by supplying satisfactory evidence of U.S. citizenship."

2. Additionally, the mailing address for the Elections Division in the Federal Form should be revised as follows: Elections Division, Office of the Secretary of State, 2 Martin Luther King Jr. Drive, Suite 802 Floyd West Tower, Atlanta, Georgia 30334.

Alice Miller
Election Assistance Commission
Page | 2

Since this information is necessary to enable state election officials to assess the eligibility of an applicant, your prompt consideration of this request is appreciated. In the event we do not receive the EAC's response to this request in the next ten (10) days, we will understand that to mean the EAC is unable to make a determination on our request. Thank you in advance for your attention to this request, and please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Kemp", with a stylized flourish at the end.

Brian P. Kemp
Secretary of State

EXHIBIT

17



U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

January 29, 2016

Honorable John H. Merrill
Alabama Secretary of State
Alabama State Capitol
600 Dexter Avenue
Suite S-105
Montgomery, AL 36130

Dear Secretary Merrill:

This letter is in response to a request dated December 18, 2014, by former Secretary of State Jim Bennett. Secretary Bennett sent correspondence to EAC Commissioners Christy McCormick, Thomas Hicks, and Matthew Masterson requesting that the EAC revise the state-specific instructions for Alabama on the National Voter Registration Application form.

On February 19, 2015, you sent a follow-up letter to the Commissioners requesting that those same changes be made.

Upon review of your request, I write to inform you that the changes requested to the State of Alabama instructions on the national mail voter registration form (Federal form) have been made and posted to the EAC website.

The changes and additions *in italics* that were made to the Federal Form State Instructions for the State of Alabama are:

Registration Deadline- Voter registration is closed during the *14* days preceding an election. Applications must be postmarked or delivered by the *15th* day prior to the election.

6. ID Number. *Your social security number is requested (by authority of the Alabama Supreme Court, 17-4-122) (now omitted)* If you have one, you must provide your Alabama driver's license number or Alabama nondriver identification card number. If you do not have an Alabama driver's license or nondriver identification card, you must provide the last 4 digits of your Social Security number. If you have not been issued any of these numbers you must write the word "NONE" and a unique identified will be provided for you.

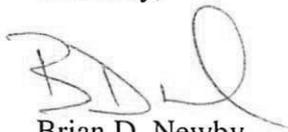
9. Signature. To register in Alabama you must:

- be a citizen of the United States. The county board of registrars 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.
- 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 (now omitted) involving moral turpitude (or have had your civil and political rights restored.)*

If the changes do not accurately reflect your request, please notify me immediately. Further, we have begun a systematic process with all states to update State-Specific Instruction Changes regularly. Please look for a separate mailing from us in the coming days and notify us if any additional State-Specific Instructions are in need of modernization or further calibration with your procedures.

If you have any questions on this matter, please do not hesitate to contact me at 301-563-3959 or at bnewby@eac.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "BDN", with a large, stylized flourish extending from the end of the signature.

Brian D. Newby
Executive Director

EXHIBIT

18



U.S. ELECTION ASSISTANCE COMMISSION
1335 East West Highway, Suite 4300
Silver Spring, MD 20910

January 29, 2016

Honorable Brian P. Kemp
Georgia Secretary of State
214 State Capitol
Atlanta, GA 30334

Dear Secretary Kemp:

This letter is a follow-up to correspondence to the U.S. Election Assistance Commission requesting modification of instructions relative to Georgia on the national mail voter registration form (Federal Form).

You requested that the EAC revise the Georgia State-Specific Instructions by making the following changes (*in italics*):

Revision of the mailing address is as follows:

Mailing address:
Election Division
Office of the Secretary of State
Suite 802 Floyd West Tower
2 Martin Luther King, Jr. Drive
Atlanta, GA 30334

Insertion of an additional bullet after the last bullet in the Signature section with the following text:

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
- 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
- *be found eligible to vote by supplying satisfactory evidence of U.S. citizenship*

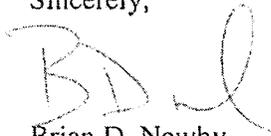
On August 15, 2013, Acting Executive Director Alice Miller opined that the EAC was authorized to approve the change related to the mail address and accordingly made that change to the Georgia instructions on the Federal Form. Her August 15, 2013, letter further opined that EAC staff was constrained to defer the request regarding citizenship documentation until EAC had a quorum of Commissioners.

Upon review of your request, I write to inform you that all of the changes requested to the State of Georgia instructions on the national mail voter registration form (Federal form) have been made and are posted on the EAC website.

If the changes do not accurately reflect your request, please notify me immediately. Further, we have begun a systematic process with all states to update State-Specific Instruction Changes regularly. Please look for a separate mailing from us in the coming days and notify us if any additional State-Specific Instructions are in need of modernization or further calibration with your procedures.

If you have any questions on this matter, please do not hesitate to contact me at 301-563-3959 or at bnewby@eac.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "BDN", with a stylized flourish extending to the right.

Brian D. Newby
Executive Director

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

LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES, LEAGUE OF
WOMEN VOTERS OF ALABAMA, LEAGUE
OF WOMEN VOTERS OF GEORGIA,
LEAGUE OF WOMEN VOTERS OF KANSAS,
PROJECT VOTE, GEORGIA STATE
CONFERENCE OF THE NAACP, GEORGIA
COALITION FOR THE PEOPLE'S AGENDA,
MARVIN BROWN, and JOANN BROWN

Plaintiffs,

vs.

BRIAN D. NEWBY, in his capacity as the Executive
Director of The United States Election Assistance
Commission; and

THE UNITED STATES ELECTION ASSISTANCE
COMMISSION

Defendants.

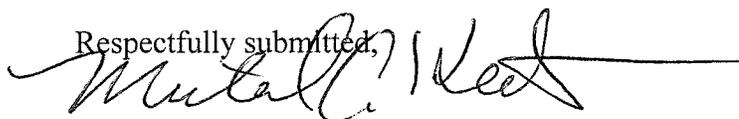
Case No. 16-cv-236 (RJL)

**CERTIFICATION BY MICHAEL KEATS IN SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to LCvR 65.1(a) of the Rules of the United States District Court for the District of Columbia, I, Michael Keats, hereby certify that I have attempted to provide advance notice of this application for a temporary restraining order and preliminary injunction ("Motion") by communicating with a senior lawyer at the U.S. Department of Justice who previously represented the U.S. Election Assistance Commission and its former Acting Executive Director

before the U.S. Court of Appeals for the Tenth Circuit in a related matter, and have furnished copies of all pleadings and papers filed in the action to date upon counsel for the Defendants. Documentation of these communications are annexed hereto. These efforts are in addition to, and not in lieu of, the service effected upon the defendants by overnight mail as described in the Certificate of Service accompanying this Motion pursuant to LCvR 5.4(d).

Dated: February 16, 2016

Respectfully submitted,


Michael Keats*
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, NY 10038-4982
Tel: (212) 806-5533
Fax: (212) 806-6006
mkeats@stroock.com
**Pro hac vice* motion for admission pending

Goulet, Chelsea L.

From: Keats, Michael C.
Sent: Wednesday, February 17, 2016 12:21 PM
To: Dodge, Joel T.; Goulet, Chelsea L.
Subject: FW: League of Women Voters v. EAC
Attachments: (76065583_1) Motion for TRO.PDF; (76065576_1) Memorandum of Law - TRO.PDF; (76065580_1) Proposed Order - TRO.PDF

Please add this email to certificate

From: Keats, Michael C.
Sent: Wednesday, February 17, 2016 12:21 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject: League of Women Voters v. EAC

Hi Bonnie – Here are the motion papers. I will forward the exhibits separately.

Happy to discuss if you'd like.

Best,

Michael

Michael C. Keats | Partner
Stroock & Stroock & Lavan LLP
180 Maiden Lane | New York, NY 10038-4982
(212) 806-5533 (Direct Phone) | (917) 494-8232 (Mobile)
mkeats@stroock.com | www.stroock.com

Goulet, Chelsea L.

From: Keats, Michael C.
Sent: Wednesday, February 17, 2016 12:02 PM
To: Dodge, Joel T.; Goulet, Chelsea L.
Subject: Fwd: League of Women Voters v. EAC

Michael C. Keats
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038-4982
212.806.5533 (office)
917.494.8232 (cell)
mkeats@stroock.com

Begin forwarded message:

From: "Robin-Vergeer, Bonnie (CRT)" <Bonnie.Robin-Vergeer@usdoj.gov>
Date: February 17, 2016 at 12:01:14 PM EST
To: "Keats, Michael C." <mkeats@stroock.com>
Subject: **RE: League of Women Voters v. EAC**

Okay, thanks.

--Bonnie

From: Keats, Michael C. [<mailto:mkeats@stroock.com>]
Sent: Wednesday, February 17, 2016 11:58 AM
To: Robin-Vergeer, Bonnie (CRT)
Subject: League of Women Voters v. EAC

We are filing our TRO and PI motion papers as we speak. I will send you copies shortly.

Michael

Michael C. Keats | Partner
Stroock & Stroock & Lavan LLP
180 Maiden Lane | New York, NY 10038-4982
(212) 806-5533 (Direct Phone) | (917) 494-8232 (Mobile)
mkeats@stroock.com | www.stroock.com

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:30 PM
To: Goulet, Chelsea L.; Dodge, Joel T.
Subject: FW:

From: Keats, Michael C.
Sent: Monday, February 15, 2016 7:44 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject: Re:

Appreciate it

Michael C. Keats
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038-4982
212.806.5533 (office)
917.494.8232 (cell)
mkeats@stroock.com

On Feb 15, 2016, at 7:42 PM, Robin-Vergeer, Bonnie (CRT) <Bonnie.Robin-Vergeer@usdoj.gov> wrote:

Let me see if I can get back to you on that.

--Bonnie

On Feb 15, 2016, at 4:10 PM, Keats, Michael C. <mkeats@stroock.com> wrote:

Any idea who will be appearing for EAC? We intend to move for a TRO and PI this week, may be as soon as tomorrow afternoon or Wednesday morning. I want to make sure you all have sufficient notice to appear.

Michael C. Keats
Stroock & Stroock & Lavan LLP
180 Maiden Lane<x-apple-data-detectors://1/1>
New York, NY 10038-4982<x-apple-data-detectors://1/1>

212.806.5533<<tel:212.806.5533>> (office)

917.494.8232<<tel:917.494.8232>> (cell)

mkeats@stroock.com<<mailto:mkeats@stroock.com>>

Dodge, Joel T.

From: Keats, Michael C.
Sent: Monday, February 15, 2016 7:53 PM
To: Schmidt, Amelia J.; Dodge, Joel T.; Goulet, Chelsea L.
Subject: Fwd: Re:

Fyi

For affidavit about my attempts to get in touch with DoJ before moving for TRO.

Michael C. Keats
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038-4982
212.806.5533 (office)
917.494.8232 (cell)
mkeats@stroock.com

Begin forwarded message:

From: "Robin-Vergeer, Bonnie (CRT)" <Bonnie.Robin-Vergeer@usdoj.gov>
Date: February 15, 2016 at 7:42:54 PM EST
To: "Keats, Michael C." <mkeats@stroock.com>
Subject: Re:

Let me see if I can get back to you on that.

--Bonnie

On Feb 15, 2016, at 4:10 PM, Keats, Michael C. <mkeats@stroock.com> wrote:

Any idea who will be appearing for EAC? We intend to move for a TRO and PI this week, may be as soon as tomorrow afternoon or Wednesday morning. I want to make sure you all have sufficient notice to appear.

Michael C. Keats
Stroock & Stroock & Lavan LLP
180 Maiden Lane<x-apple-data-detectors://1/1>
New York, NY 10038-4982<x-apple-data-detectors://1/1>

212.806.5533<<tel:212.806.5533>> (office)

917.494.8232<<tel:917.494.8232>> (cell)

mkeats@stroock.com<<mailto:mkeats@stroock.com>>

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:31 PM
To: Goulet, Chelsea L.; Dodge, Joel T.
Subject: FW: Activity in Case 1:16-cv-00236 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES et al v. NEWBY et al Complaint

From: Keats, Michael C.
Sent: Friday, February 12, 2016 6:45 PM
To: 'Robin-Vergeer, Bonnie (CRT)'
Subject: RE: Activity in Case 1:16-cv-00236 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES et al v. NEWBY et al Complaint

Can you possibly let me know who at DOJ ultimately ends up handling this? Would like to open a line of communication as soon as possible.

Many thanks!

Michael

From: Keats, Michael C.
Sent: Friday, February 12, 2016 6:00 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject: Activity in Case 1:16-cv-00236 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES et al v. NEWBY et al Complaint

As discussed.

Have a good weekend.

- Michael

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:30 PM
To: Dodge, Joel T.; Goulet, Chelsea L.
Subject: FW: Activity in Case 1:16-cv-00236 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES et al v. NEWBY et al Complaint
Attachments: Filed Complaint and Exhibits.pdf

From: Keats, Michael C.
Sent: Friday, February 12, 2016 6:00 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject: Activity in Case 1:16-cv-00236 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES et al v. NEWBY et al Complaint

As discussed.

Have a good weekend.

- Michael

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:31 PM
To: Goulet, Chelsea L.; Dodge, Joel T.
Subject: FW:

From: Keats, Michael C.
Sent: Friday, February 12, 2016 2:04 PM
To: 'Robin-Vergeer, Bonnie (CRT)'
Subject: RE:

yes

From: Robin-Vergeer, Bonnie (CRT) [<mailto:Bonnie.Robin-Vergeer@usdoj.gov>]
Sent: Friday, February 12, 2016 2:03 PM
To: Keats, Michael C.
Subject: RE:

Can you call me between 3:00 and 3:30? (202) 353-2464.

Thanks.

From: Keats, Michael C. [<mailto:mkeats@stroock.com>]
Sent: Friday, February 12, 2016 2:02 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject: RE:

Sure name your time //

From: Robin-Vergeer, Bonnie (CRT) [<mailto:Bonnie.Robin-Vergeer@usdoj.gov>]
Sent: Friday, February 12, 2016 12:27 PM
To: Keats, Michael C.
Subject: RE:

Yes – but can we make it later this afternoon?

--Bonnie

From: Keats, Michael C. [<mailto:mkeats@stroock.com>]
Sent: Friday, February 12, 2016 9:54 AM
To: Robin-Vergeer, Bonnie (CRT)
Subject:

Have time to chat later today? I should free up after 11.

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:30 PM
To: Dodge, Joel T.; Goulet, Chelsea L.
Subject: FW:

From: Keats, Michael C.
Sent: Friday, February 12, 2016 9:54 AM
To: Robin-Vergeer, Bonnie (CRT)
Subject:

Have time to chat later today? I should free up after 11.

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:30 PM
To: Goulet, Chelsea L.; Dodge, Joel T.
Subject: FW:

From: Keats, Michael C.
Sent: Tuesday, February 02, 2016 5:24 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject:

[http://www.eac.gov/assets/1/Documents/Organizational%20Management%20Policy%20Statement%20\(final%20adopted%202-24-15-cm\).pdf](http://www.eac.gov/assets/1/Documents/Organizational%20Management%20Policy%20Statement%20(final%20adopted%202-24-15-cm).pdf)

Dodge, Joel T.

From: Keats, Michael C.
Sent: Tuesday, February 16, 2016 3:30 PM
To: Dodge, Joel T.; Goulet, Chelsea L.
Subject: FW:

From: Keats, Michael C.
Sent: Tuesday, February 02, 2016 5:21 PM
To: Robin-Vergeer, Bonnie (CRT)
Subject:

[http://www.eac.gov/assets/1/Documents/Statement%20by%20Commissioner%20Hicks%20NVRA%20Form%20\(2-2-16\).pdf](http://www.eac.gov/assets/1/Documents/Statement%20by%20Commissioner%20Hicks%20NVRA%20Form%20(2-2-16).pdf)

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

LEAGUE OF WOMEN VOTERS OF THE
UNITED STATES, LEAGUE OF
WOMEN VOTERS OF ALABAMA, LEAGUE
OF WOMEN VOTERS OF GEORGIA,
LEAGUE OF WOMEN VOTERS OF KANSAS,
GEORGIA STATE CONFERENCE OF THE
NAACP, GEORGIA COALITION FOR THE
PEOPLE'S AGENDA, MARVIN BROWN, JOANN
BROWN, and PROJECT VOTE

Plaintiffs,

vs.

BRIAN D. NEWBY, in his capacity as the Executive
Director of The United States Election Assistance
Commission; and

THE UNITED STATES ELECTION ASSISTANCE
COMMISSION

Defendants.

Case No. 16-cv-236 (RJL)

**[PROPOSED] TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Upon consideration of Plaintiffs' application for a temporary restraining order and a preliminary injunction voiding the Executive Director's unilateral amendments to the Federal Form and vacating the letters the Executive Director transmitted to Alabama, Georgia, and Kansas; of the Complaint; of the Memorandum of Law filed in support thereof, of accompanying declarations, and of any opposition thereto, of the arguments of counsel, and of the entire record in this action;

It appearing to the Court that the Plaintiffs are likely to succeed on the merits of their action, that they will suffer irreparable injury if the requested relief is not issued, that the Defendants will not be harmed if the requested relief is issued, and that the public interest favors the entry of such an order, it is, therefore,

ORDERED that Plaintiffs' application for a temporary restraining order and a preliminary injunction is hereby GRANTED; and it is further

ORDERED that Defendants will immediately reverse the Executive Director's unlawful changes to the Federal Form on the EAC website; and it is further

ORDERED that Defendants will immediately withdraw the letters issued to Alabama, Georgia and Kansas on January 29, 2016; and it is further

ORDERED that Defendants will instruct election officials in Alabama, Georgia and Kansas to replace any copies of the unlawfully modified Federal Form with the reinstated unmodified Federal Form which does not include documentary proof of citizenship requirements; and it is further

ORDERED, in accordance with Fed. R. Civ. P. 65(c) and *Nat. Res. Def. Council, Inc. v. Morton*, 337 F. Supp. 167, 169 (D.D.C. 1971), *aff'd on other grounds*, 458 F.2d 827 (D.C. Cir. 1972) (bonds for injunctive relief may be reduced when plaintiff initiates a public interest litigation), that this injunction shall be effective upon Plaintiffs' giving of security in the amount of \$10 by depositing that amount with the Clerk of Court; and it is further

ORDERED, in accordance with Fed. R. Civ. P. 65(b), that this temporary restraining order shall expire ten days after its entry upon the docket, unless extended for good cause shown.

Date: _____

Time: _____

Judge Richard J. Leon, U.S. District Court

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on the 17th day of February, 2016, they caused one copy each of the foregoing MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, including memorandum in support and attachments, to be served by electronic mail and overnight mail on the following:

Brian D. Newby
Executive Director
United States Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910
(301) 734-3108
bnewby@eac.gov

United States Election Assistance Commission
1335 East West Highway, Suite 4300
Silver Spring, MD 20910
(301) 734-3108

Loretta E. Lynch
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-2000

Channing D. Phillips
United States Attorney for the District of Columbia
United States Attorney's Office
555 4th Street, NW
Washington, DC 20530
(202) 252-7566

February 17, 2016

Respectfully submitted,

By: /s/ Amelia J. Schmidt

Amelia J. Schmidt
D.C. Bar No. 1012380
STROOCK & STROOCK &
LAVAN LLP

1875 K Street NW
Washington, DC 20006
(202) 739-2800
aschmidt@stroock.com

*Attorney for Plaintiffs the League of
Women Voters of the United States,
the League of Women Voters of
Kansas, the League of Women
Voters of Alabama, and the League
of Women Voters of Georgia*