PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0338
Comment from Gunther Winkel

Submitter Information

Name: Gunther Winkel
Address:
   408 E Yeager Street
   Rose Hill, KS, 67133
Email: gunther.winkel@att.net
Phone: 3162434201

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this! Not only will it create chaos but also lead to voter fraud. And it should be in any government officials a priority to make sure that voter fraud is hindered. It is no burden to provide proof of citizenship as this is required for multiple other occasions. Thank you for listening to the legal voters in Kansas."

EAC000669
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0339
Comment from Debra Mize

Submitter Information

Name: Debra Mize
Address:
6741 W. 138th Terrace, #1411
Overland Park, KS, 66223

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0340
Comment from James Lyle

Submitter Information

Name: James Lyle
Address:
   12905 Lucille St
   Overland Park, KS, 66213
Email: JimLyle@everestkc.net
Phone: 913-660-8578

General Comment

docket number EAC-2013-0004

I am commenting on the EAC pending decision on the National Mail Voter Registration Form. Compatible with the 10th amendment, the EAC is obligated to comply with Kansas law that would require the voter registration form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States.

Without the change, the EAC will be purposely making it more difficult for Kansas residents to register to vote for elections in Kansas. By not making the appropriate changes in the federal form, voters will not know about the Kansas requirement. It is inconsistent that the EAC provide other state requirements and choose to not comply with this one. It is not the jurisdiction of the federal government to impose the opinion of a few people at the federal level on Kansas voters.

Kansas is trying to provide protection from voter fraud. Please update the Kansas instructions so that they are current with Kansas law.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0341
Comment from Zane Mevey

Submitter Information

Name: Zane Mevey
Address:
301 N. Brunswick
Wichita, KS, 67212

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0342
Comment from Elizabeth Van De Kerkhove

Submitter Information

Name: Elizabeth Van De Kerkhove
Address: 21200 West 123rd Street
Olathe, KS, 66061
Email: eavandekerkhove@sbcglobal.net
Phone: 9137826563

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0343
Comment from Sally Holter

Submitter Information

Name: Sally Holter
Address:
  5112 SW 33rd St
  Topeka, KS, 66614-3908

General Comment

I am a resident of Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicants using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0344
Comment from Steve Davis

Submitter Information

Name: Steve Davis
Address: 943 N Parker Terr
          Olathe, KS, 66061
Email: stevedavis@sbcglobal.net
Phone: 913-397-8646

General Comment

I have been following news that includes voter registration requirements. If we are rational about it, we should have people be able to prove they are a citizen in order to vote in any public election. That should be for all states, but to exclude such requirements for any state is bad faith. Let's not go there. Please feel free to call me if you have a better idea.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0345
Comment from Darryl/Ramona Taylor

Submitter Information

Name: Darryl/Ramona Taylor
Address:
2409 W. 127th St.
Leawood, KS, 66209-1340
Email: hdw@kc.rr.com
Phone: 913-345-8414

General Comment

We support proof of registered citizenship in the State of Kansas. That is the only way to be fair and honest in any of the United States of America. We do not understand why there should be ANY objection to the important matter of elections. NONE !!!
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0346
Comment from Shelli Miller

Submitter Information

Name: Shelli Miller
Address:
  141 N Park Ave
  Valley Center, KS, 67147
Email: shelli.miller7088@sbcglobal.net
Phone: 3167552282

General Comment

We need to retain and make permanent the voter proof of id requirement. As a poll worker, I have experienced attempted voter fraud and saw how the voter proof-of-id requirement gave us the ability to quash the attempts with courtesy and the law to back us. This proof of voter id is of critical importance and must be retained.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0347
Comment from Ralph McFillen

Submitter Information

Name: Ralph McFillen
Address:
   5908 Edgewater Dr.
   Overland Park, KS, 66223

General Comment

I support the additional proof of citizenship requirement to registrar to vote in KS. Only US citizens should be allowed to vote in elections.
"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. It only makes sense that you must be a citizen of the United States in order to vote in our elections. Thank you
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0349
Comment from Hans von Spakovsky

Submitter Information

Name: Hans von Spakovsky
Address:
   1000 Pruitt Court
   Vienna, VA, 22180
Email: hans.vonspakovsky@heritage.org
Phone: 202.608.6207

General Comment

See attached file(s)

Attachments

US Election Assistance Commission Comments of Hans von Spakovsky
Hans A. von Spakovsky  
1000 Pruitt Court  
Vienna, VA 22180  
Tel. (202) 608-6207  
Hans.vonspakovsky@heritage.org

January 2, 2014

Alice Miller  
Chief Operating Officer and Acting Executive Director  
U.S. Election Assistance Commission  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

Re: Docket No. EAC-2013-0004  
Amendment of State-specific Instructions on National Voter Registration Act  
(NVRA) Federal Form

Dear Ms. Miller:

This letter is submitted in my personal capacity in response to the Election Assistance Commission’s “Notice for Public Comment” on the request of Arizona, Kansas, and Georgia to modify their state-specific instructions for the federal voter registration form (Federal Form). The EAC should modify the state-specific instructions because the agency’s authority only extends to the contents of the Federal Form itself and these states are not asking for any changes in the Federal Form. The EAC has no legal authority to refuse to implement the state-specific instructions that inform residents of those states based on state law that individuals registering to vote with the Federal Form must also provide proof of citizenship with the registration form to verify their eligibility.

By way of background, I have almost three decades of experience in elections, both administrative and legal:

- I have served on two separate county registration and election boards in two different states, Georgia and Virginia, implementing the NVRA — both counties were the largest counties in each state with the largest number of registered voters;
- I spent four years in the Civil Rights Division of the U.S. Department of Justice as a voting lawyer, including three years as Counsel to the Assistant Attorney General for Civil Rights where I coordinated enforcement of federal voting rights laws — specifically the National Voter Registration Act;
I was a member of the first Board of Advisors of the EAC where I worked extensively with staff on many different issues;

I spent two years as a Commissioner on the Federal Election Commission;

I am the author of numerous publications on voting and elections, including the coauthor of *Who’s Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk* (Encounter Books, 2012);

I wrote the chapter on the National Voter Registration Act in *America Votes! A Guide to Modern Election Law and Voting Rights* (2nd Edition), published by the American Bar Association’s Section on State and Local Government Law in 2012 (Benjamin E. Griffith, editor); and

I am the Manager of the Election Law Reform Initiative at the Heritage Foundation.

**First,** it is important to understand the EAC’s regulatory authority with regard to the Federal Form is strictly limited to the four corners of the form itself. **Section 9 of the NVRA provides** that the EAC “shall develop a mail voter registration form for elections” in consultation with chief state election officials.1 Section 9(b) lays out the “contents” of the Federal Form. None of the states that have made this request to the EAC is asking the agency to change the “contents” of the Federal Form or to make any changes bearing on the EAC’s federal responsibilities.

They are, for example, asking the EAC to change the citizenship question that currently exists on the top, left-hand corner of the Federal Form as required by the Help America Vote Act (HAVA). Arizona, Georgia, and Kansas are simply asking the EAC to change the instructions for their states to inform applicants that they will have to submit additional information or documentation to be able to vote when they submit the Federal Form to become registered.

The entire webpage of the EAC on the Federal Form is set up to accommodate such state-specific instructions. The “Register to Vote” webpage2 specifically warns applicants in bold-faced font that:

> **You must follow the state-specific instructions listed for your state. They begin on page 3 of the form and are listed alphabetically by state.**

The Federal Form is followed by 17 pages of state-specific instructions. This includes the instructions for the state of Louisiana on page nine -- inserted by the EAC -- that tell Louisiana residents using the Federal Form that if they don’t have a Louisiana driver’s license, special identification card, or a social security number, they will have to attach to the Federal Form to complete their registration:

(a) a copy of a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of applicant.

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This Louisiana requirement that the EAC previously listed in the state-specific instructions for the Federal Form is no different than the instructions that Arizona, Georgia, and Kansas are asking the EAC to list in their state-specific instructions telling applicants that they will have to provide proof of citizenship to complete their registration.

What these three states are doing is also no different from the circumstances that apply under Section 303(b) of HAVA. While states must “accept and use” the Federal Form for individuals who register by mail for a federal election, they are not eligible to actually vote for the first time in a federal election until they provide one of the forms of identification outlined in the statute, either attached to the Federal Form or produced for the review of election precinct officials the first time they go vote. Similarly, Arizona, Georgia, and Kansas do not consider an individual who has used the Federal Form to register to be eligible to vote until that person has provided proof-of-citizenship. The procedure in which the Federal Form is used with an additional documentation requirement is virtually identical.

Second, the EAC has no authority to refuse to approve state-specific instructions that deal with the eligibility and qualifications of voters. While Congress has the authority to regulate the “Time, Place, and Manner” of federal elections under the Elections Clause of the Constitution, it does not have the authority to alter or interfere with the qualifications of voters—that is a prerogative of the states. In this case, several states have determined that proof of citizenship is, as outlined in Section 9 of the NVRA, “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” Therefore, as the U.S. Supreme Court outlined in Arizona v. Inter-Tribal Council of Arizona, Inc., states have the right to request that the EAC “alter the Federal Form to include information the State deems necessary to determine eligibility.” In fact, it would be “arbitrary for the EAC to refuse to include Arizona’s instruction when it has accepted a similar instruction requested by Louisiana.”

Third, the need for such proof-of-citizenship requirements is obvious. From an election administration point of view, not providing clear and accurate instructions to allow registrants to fully and completely register the first time they submit an application is both inefficient and a disservice to the voter. An incomplete registration application due to incomplete instructions may result in voters not meeting important registration deadlines. Further, the presence of the citizenship question on the federal form, as well as the affirmation oath, has not prevented numerous noncitizens from registering and voting illegally in federal and state elections, despite the fact that doing so is a felony under federal law and most state laws. I outline numerous cases of noncitizens registering and voting illegally despite the requirements of the Federal Form in Chapter Five of my book Who’s Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk ( Encounter Books, 2012).

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42 U.S.C. § 15483(b).

Art. I, Sec. 4, cl. 1.

See Art. I, Sec. 2, Cl. 1; Seventeenth Amendment; Art. II, Sec. 1, cl.2.

570 U.S. ______ (2013), slip op. at 16.

Slip op. at 17.

See 42 U.S.C. § 1973gg-10(2) (fraudulent registration and voting under the NVRA); 18 U.S.C. § 1015(f) (false claims to register or vote); 18 U.S.C. § 911 (false claim of citizenship); and 18 U.S.C. § 611 (voting by aliens).
In 2005, a report by the Government Accountability Office found that up to three percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not citizens. Less than two weeks before the EAC’s Dec. 19 “Notice for Public Comment,” Michigan Secretary of State Ruth Johnson asked her attorney general to investigate “10 people who aren’t U.S. citizens but have voted in past Michigan elections.”

Only one day before the EAC’s “Notice for Public Comment,” Ohio Secretary of State Jon Husted announced that he had found that 17 non-citizens “illegally cast ballots in the 2012 presidential election.” The inadequacy of the affirmation of citizenship in the oath was demonstrated just four days before the EAC’s “Notice” by a newspaper story about a Bosnian citizen who “readily admitted registering and voting.” But he did “not read the section of the voter registration form that includes the affirmations of citizenship.”

Those cases and the thousands of noncitizens who tried to register in Georgia and Arizona according to their records even after their proof-of-citizenship laws were in effect easily demonstrate that, as the Supreme Court in *Arizona v. Inter-Tribal Council of Arizona, Inc.* said, that “a mere oath will not suffice to effectuate its citizenship requirements.” Catching such illegal voting after the fact cannot retrieve the fraudulent ballots cast by noncitizens that diluted and stole the votes of American citizens. And catching a violation after the fact is extremely difficult – it rarely happens because local election officials lack the means to verify the citizenship of registrants once they have become registered. As a federal court in Florida said, “For noncitizens, the state’s duty is to maintain an accurate voting list... A state can and should do that on the front end, blocking a noncitizen from registering in the first place.”

The EAC is, therefore, “under a nondiscretionary duty to include” the proof-of-citizenship requirements of these states in the instructions for the use of the Federal Form. A failure to do so would be a violation of 5 U.S.C. §706, which allows a federal court to “compel agency action unlawfully withheld” (emphasis added). This is particularly true given the mandate in HAVA, the statute that authorized the creation of the EAC, that states set up and maintain a voter registration system that ensures “that voter registration records in the State are accurate” and that state election officials are able to “verify the accuracy of the information provided on applications for voter registration.”

The EAC is a bipartisan agency that should not be inserting itself into policy decisions made by the states on the best ways to determine the accuracy of registration information and the eligibility of registrants. Refusing to provide complete instructions negatively impacts voters and the voting registration process in the states and places the EAC completely at odds with the reason the EAC was created – the whole point of the EAC as outlined in HAVA is to assist the

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11 “Guilty Pleas Resolve All Five Voter Fraud Convictions in Iowa,” DESMONEREGISTER.COM (Dec. 15, 2013). Another noncitizen in Iowa was charged with election misconduct for voting on Dec. 20, the day after the EAC “Notice.”
15 See 42 U.S.C. § 15483.
states in their administration of elections, not obstruct and hinder them. Refusing to update the instructions is a political decision, not an election administration decision.

This is important not just for all of the reasons cited in this comment, but to also prevent confusion to voters and the administrative problems caused by a dual registration system. As you are no doubt well aware, the Supreme Court’s decision in Arizona v. Inter-Tribal Council of Arizona, Inc., only applies to the Federal Form, not the separate state-approved voter registration forms. Thus states currently require proof-of-citizen documentation from anyone registering using their state-approved voter registration forms – just not anyone registering using the Federal Form. The EAC could easily resolve this issue by simply approving the additional requirements for residents of Arizona, Georgia, and Kansas using the Federal Form, as it did for Louisiana.

However, with all due respect, I must also point out that as the Acting Executive Director of the EAC, you do not have the legal authority to refuse to make the specific changes in registration instructions requested by the states. In fact, the original decision refusing to change the state-specific instructions that was made by your predecessor – not the EAC commissioners themselves – on March 6, 2006 was illegal and void.

Under the EAC’s authorizing statute, the EAC can act “only with the approval of at least three of its members.”15 That approval process, which constitutes a core function of the Commission, simply cannot be delegated to the EAC’s Executive Director. Therefore, a refusal by the EAC to make a requested change to a state’s instructions for registration that are based on state law could only be made by a vote of at least three commissioners, not by the Commission’s Executive Director acting unilaterally. As you are aware, the Commission currently lacks a quorum and no such vote was ever held.16

The EAC should change the state-specific instructions for Arizona, Georgia, and Kansas – as well as any other state that makes such a request in the future – to instruct the residents of those states of the proof-of-citizenship requirements that must be complied with when registering with the Federal Form. Since there are no sitting commissioners currently who could even vote to disapprove such a change, you have a legal obligation to immediately make the changes requested by the states.

Sincerely yours,

Hans A. von Spakovsky

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16 The vote on July 11, 2006 to reconsider the Executive Director’s final decision, which failed, could not legally authorize the initial delegation to the Executive Director of the authority to make this decision.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0350
Comment from Richard Bottoms

Submitter Information

Name: Richard Bottoms
Address:
   22652 W. 220th st.
   Spring Hill, KS, 66083

General Comment

Your politics are showing. Please immediately update the 'Kansas Voter ID Registration Form as is required. Failure to do so will not be forgotten by Kansas voters, as well as those voters in similarly abused States.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0351
Comment from Mary Fritzemeier

Submitter Information

Name: Mary Fritzemeier
Address:
   1038 N. 4th St.
   Independence, KS, 67301

General Comment

As a resident of KS I believe it is important for the EAC to update the National Mail Voter Registration Form to include instructions that Kansas require a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0352
Comment from GERALD BOECKMAN

Submitter Information

Name: GERALD BOECKMAN
Address:
   BOX 101
   SCAMMON, KS, 66773
Email: gossenbrat@hotmail.com
Phone: 620-479-3191

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this! Why is it so easy to be so lazy????"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0353
Comment from Robert Hecht

Submitter Information

Name: Robert Hecht
Address:
    RR
    Seneca, KS, 66538

General Comment

I am a Kansas resident. I know that in past elections in other states there has been voter fraud. This must be stopped if we are to maintain any form of credible election process. The EAC must update the National Mail Voter Registration Form to include instructions to verify that the applicant using the federal form is a citizen of the United States. We want credibility in our governing process and we want only US citizens to vote and we want to be sure that they only vote once.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0354
Comment from Keith Esau

Submitter Information

Name: Keith Esau
Address:
   11702 S. Winchester St.
   Olathe, KS, 66061
Email: repesau14@gmail.com
Phone: 913-515-2135

General Comment

As you well know, all elections are run by the states, not the federal government. As such, it is the states’ right to mandate verifications needed to ensure the security of our elections from foreign influences. Kansas has put in place reasonable verifications that the federal government is incumbent to place on their forms to prevent have a tiered voting system. Please do not create a tiered voting system.

Keith Esau, Kansas State Representative, District 14
Member, Kansas House Elections Committee
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0355
Comment from Anonymous Anonymous

Submitter Information

Name: Anonymous Anonymous
Address:
7325 E. 26th Court N
Wichita, KS, 67226

General Comment

I live in Kansas. The EAC should update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. You must respect this Kansas law. It is not the EAC's role to "legislate" by refusing to cooperate with Kansas law. This will create chaos in Kansas if you don't do this!
Public Submission

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0356
Comment from James Stackhaus

Submitter Information

Name: James Stackhaus
Address:
12554 Prestwick Lane
Kansas City, KS, 66109
Email: jstackhaus@sunflower.com
Phone: 913-721-0277

General Comment

I am a registered voter in the state of Kansas and I believe that preserving the right to vote for citizens of the United States (only) is extremely important. The law in the state of Kansas requires voters to present proof of citizenship at the poll when voting. The EAC mail in registration form MUST comply with our state's law.
Under Kansas law, anyone that registers to vote in Kansas must present one of 13 recognized documents as proof of U.S. and Kansas citizenship. However, the EAC is setting up a National Mail Voter Registration Form that does NOT require this documentation. Kansas is trying to have the documentation requirements added to the mailer. It is ILLEGAL for non citizens to vote. I expect all divisions of the government to follow the law and do anything within their power to make following the law easy.

Failure to include the language will allow voter applicants to register without proof of citizenship. The Federal Government, through the Election Assistance Commission, is trying to do an end-around run on Kansas Election Laws; which would make it easy for non-citizens to vote. Apparently our laws isn't important to EAC. It is important to the citizens of Kansas. EAC should enact the Kansas law as written.
PUBLIC SUBMISSION

**Docket:** EAC-2013-0004
National Mail Voter Registration Form

**Comment On:** EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

**Document:** EAC-2013-0004-0358
Comment from Sara Macedo

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**Submitter Information**

**Name:** Sara Macedo
**Address:**
   9029 West 194th Terrace
   Bucyrus, KS, 66013

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**General Comment**

The EAC must do their job! They need to update the Kansas specific instructions on the national mail voter registration form. It needs to include instructions that Kansas requires a copy of one of three documents to verify that the applicant using the federal form is a citizen of the United States of America.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0359
Comment from Frank R Smardo

Submitter Information

Name: Frank R Smardo
Address:
    716 W 2
    Pittsburg, KS, KS. 66762

General Comment

It is important that EAC update now!

Thank you.

Frank R, Pittsburg KS
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0360
Comment from Rep. TerriLois Gregory

Submitter Information

Name: Rep. TerriLois Gregory
Address:
   Box 105
   Baldwin City, KS, 66006

General Comment

As a former member of the Kansas House Elections Committee, I sat for all testimony and know our law was thoroughly reviewed and structured with fairness. It is the right of Kansas citizens to self-govern. Please do your job and do not allow federal interventionism based upon legalism to usurp legitimate legislative functions of our State of Kansas. As a citizen of Kansas, I want to know my legal vote is not cancelled by an illegal vote. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. Thank you for your time and service. Rep. TerriLois Gregory
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0361
Comment from Marleena Stein

Submitter Information

Name: Marleena Stein
Address:
   2794 SW Boswell Ave
   Topeka, KS, 66611

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0362
Comment from ed kearn

Submitter Information

Name: ed kearn
Address: 1631 sw macvicar ave
         topeka, KS, 66604
Email: efax@gateman.com

General Comment

Hello. I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0363
Comment from Andrew Kling

Submitter Information

Name: Andrew Kling
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Kansas City, MO, 64108
Phone: 816-221-9900
Submitter's Representative: Andrew Kling
Organization: Communities Creating Opportunity

General Comment

We are a faith-based, nonprofit organization that works with hundreds of Kansas voters on issues that impact their community. We are a non-partisan and do not endorse candidates for public office.

A key value of ours is that every person has a God-given, inherent dignity that deserves respect. Our goal is to unlock the power of people to reach their potential, engaging in and improving their communities. This has included working with churches and other community organizations to register voters and learn how to participate in the electoral process. And as a result, we see changes that benefit everyone – providing new opportunities, relief, and new generations of social entrepreneurship for the community.

This proposed rule change is a hatchet strike at the ankles of democracy – and the communities who will suffer the most from it are exactly the people we should be inviting into the democratic process. Vulnerable and marginalized communities, especially low income and people of color, have faced great barriers to representation and recognition from their government. This rule change will only make the problem worse. Adding costly and unnecessary measures that complicate, delay, and deter participation in the electoral process is cynical, shortsighted, and antithetical to our values as a nation.

Equitable communities fare significantly better than areas divided by high disparities – it's a good moral priority and a savvy economic goal.
Inevitably, some will disagree. This is not surprising – there were even pickets and fierce opposition to affording women the right to vote. But most troubling is the facile lie at the heart of this policy change: if you don't understand how this measure places an undue burden on communities in our state, you have no business implementing public policy on this scale.

We urge the commission to reject the request to change federal voting standards to accommodate proof of citizenship requirements.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0364
Comment from Lydia Guzman

Submitter Information

Name: Lydia Guzman
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    P.O. Box 3151
    Glendale, AZ, 85312

General Comment

The League of United Latin American Citizens of Arizona submit the attached letter in opposition to the proposed proof of citizenship requirement to register to vote using the National Mail Voter Registration Form ("Federal Form")

Attachments

LULAC EAC Letter
League of United Latin American Citizens, Arizona

January 3, 2014

United States Elections Assistance Commission
Karen Lynn-Dyson, Director
Office of Research, Policy and Programs
1335 East West Highway Suite 4300
Silver Spring, MD 20910

RE: Opposition for proof of citizenship requirement to register to vote using
National Mail Voter Registration Form (“Federal Form”)

Dear Director Lynn-Dyson,

This letter is intended to officially register our objection to any changes in the National Mail Voter Registration Form also known as the Federal Voter Registration Form. The changes we specifically object to are the requirements to provide proof of citizenship to register to vote using the Federal Form.

We have worked tirelessly since the inception of our organization to ensure civic participation in our communities by conducting voter registration drives locally and also with national civic engagement campaigns. But we have experienced that in Arizona providing additional proof of citizenship has created unnecessary obstacles in our efforts. We have found that these obstacles have prevented many in our Latino community to register to vote and they simply gave up out of frustration.

Though we feel discouraged by these findings, we also feel determined, which is why our objection is so strong.

On a personal note, years back I worked as Director of Voter Outreach for the Arizona Secretary of State’s Office and it was my duty to collect voter registration numbers and any noted improprieties from all 15 counties in Arizona and compile them in a quarterly reports to submit to the Department of Justice Voting Rights Division. In the time that I worked on those reports, I can assure you that I found that there were no instances of voter fraud reported in these reports.

Today I work very closely with Immigrant communities and I can also share that every non-citizen is very well aware that they cannot register to vote and doing so are grounds for deportation. This alone is an incentive that prevents voter fraud.
Voter fraud is not a problem in Arizona. These false claims are fabricated by pundits with intent to spin for political purpose. A study of voter fraud cases in Arizona was conducted by an independent investigative reporting group out of the Arizona State University, Walter Cronkite School of Journalism. This report concluded that there were only 11 cases of voter fraud between 2000 and 2011. That's 11 cases in 11 years compared to the millions of ballots cast in that time; I can assure you that this number is laughable when the pundits spin it and we compare it to the facts.

As an appointed official to Chair our National Immigration Committee and also as an appointed official to Chair our Arizona Civil Rights Committee, I must state that our organization continues to work very hard to register Latinos to vote. Despite our efforts, we've seen lower results because of laws like Proposition 200 and we feel disenfranchised because of it.

As the LULAC Chairman of the Arizona Civil Rights Committee, I submit our official objection to providing proof of citizenship to the National Federal Voter Registration Form for the reasons stated herein.

Sincerely,

Lydia Guzman
National Immigration Committee Chairperson
Arizona Civil Rights Committee Chairperson

The League of United Latin American Citizens (LULAC) is the nation’s largest and oldest civil rights volunteer-based organization that empowers Hispanic Americans and builds strong Latino communities. Headquartered in Washington, DC, with 900 councils around the United States and Puerto Rico, LULAC’s programs, services and advocacy address the most important issues for Latinos, meeting critical needs of today and the future. For more information, visit www.LULAC.org.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0365
Comment from Martin Quezada

Submitter Information

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Phone: 602-926-5911

General Comment

See attached file(s)

Attachments

Letter to EAC re State Requests to Include Addtl Proof of Citizenship 1.3.14
United States Election Assistance Commission
Karen Lynn-Dyson, Director
Office of Research, Policy, and Programs
1335 East West Highway, suite 4300
Silver Spring, MD 20910

Dear Director Lynn-Dyson:

I am writing to provide my public comment on Arizona’s request to require documentary proof of citizenship for individuals who are using the federal voter registration form. I currently serve as an elected member of the Arizona State House of Representatives representing Legislative District #29 which is a majority-minority district that will be especially negatively impacted by any such change. This proposed amendment causes me great concern about how this will impair my constituents’ ability to exercise their constitutional right to vote. Legislative District #29 is 67.7% Latino and 78.3% minority according to the 2010 Census.

Specifically for those constituents, I adamantly oppose Arizona’s request. The federal form already requires potential voters to affirm under penalties of perjury that they are U.S. citizens. This provision on the form is more than sufficient to deter non-citizens from attempting to vote, and there is no evidence that fraud is occurring in Arizona by non-citizens attempting to register to vote.

There simply is no reason to burden potential voters with a requirement to provide documentary evidence of citizenship. Rather, what Arizona is requesting will impose a substantial burden on potential voters who do not have such documentary evidence readily available. These are individuals who are qualified electors in this state who should not be denied an opportunity to cast a ballot in this state. Further, the purpose of NVRA was to create a nationwide, uniform process for applying to vote. It should be the same process for someone in California, Oklahoma, New Hampshire or Arizona – or any other state in the union. By placing additional burdens on Arizona voters, we would be creating an unequal system that discriminates against citizens based on where they reside.

Therefore, I believe that Arizona’s request for an accommodation should be denied and no further barriers should be erected to deny access to the ballot.

Sincerely,

[Signature]

MARTÍN QUEZADA
Arizona State Representative, LD 29
Arizona Latino Caucus, Chairman
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0366
Comment from Dannie Scott

Submitter Information

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    1010 Jefferson St
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General Comment

I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0367
Comment from Catherine Engelbrecht

Submitter Information

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Houston, TX, 77008
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General Comment

See attached file(s)

Attachments

2014-1-3 EAC Public Comment EAC-2013-0004-0002 FINAL
To: Election Assistance Commission (EAC)

From: Catherine Engelbrecht, President

Date: January 3, 2014

RE: Comment on National Mail Voter Registration Form Update for AZ, GA, KS (EAC-2013-0004-0001)

Voter identification requirements; collaborative voter roll maintenance and citizenship verification, are both fundamental and essential to smart voting policy. Given emerging demographic trends on immigration and the realities of voting protocol recognized throughout Western democracies, it is highly likely that states' requests to incorporate citizenship verification into the National Mail Voter Registration Form (“federal form”) will proliferate beyond the three states currently seeking amendments. The EAC has a duty to affirm their requests based on legal precedent and voter demands.

I. Observation 1: Supreme Court Precedent

The Arizona v. Inter Tribal Council of Arizona opinion1 clearly illustrated the divisions of legal responsibility in voter registration procedures between state and federal governments. States must “accept and use” incoming federal forms and are empowered to verify applications using additional data on hand. States are welcome to develop unique voter registration forms requiring citizenship verification. Should states such as Arizona wish to seek amendments to state-specific instructions on the federal form, the Supreme Court reinforced the need to follow EAC protocols. But above all, the Court unmistakably affirmed a very specific power: “Arizona is correct that the Elections Clause empowers Congress to regulate how federal elections are held, but not who may vote in them.”

Arizona, Georgia and Kansas seek to enforce state and federal requirements that only American citizens register to vote. This requested action is in keeping with Court orders and is consistent with previous EAC actions, as seen with Louisiana.

II. Observation 2: Immigration Trends

From 1965 to 2010, Arizona, Georgia and Kansas have progressively outpaced many states in both “foreign-born resident” and “unauthorized immigrant” growth. Data demonstrates that all three states are currently working to provide a safeguard based on existing demographics rather than projections. The table provided below illustrates immigration growth trends in each state requesting instruction amendments.

1 Arizona v. Inter Tribal Council of Ariz., Inc., 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013) [2013 BL 158316]
<table>
<thead>
<tr>
<th>Year</th>
<th>AZ Foreign-Born</th>
<th>AZ Unauthorized</th>
<th>GA Foreign-Born</th>
<th>GA Unauthorized</th>
<th>KS Foreign-Born</th>
<th>KS Unauthorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-1980</td>
<td>6.0%</td>
<td>0.92%</td>
<td>1.7%</td>
<td>0.22%</td>
<td>2.0%</td>
<td>0.34%</td>
</tr>
<tr>
<td>1980-1990</td>
<td>7.6%</td>
<td>2.46%</td>
<td>2.7%</td>
<td>0.54%</td>
<td>2.5%</td>
<td>0.61%</td>
</tr>
<tr>
<td>1990-2000</td>
<td>12.8%</td>
<td>5.85%</td>
<td>7.1%</td>
<td>3.05%</td>
<td>5.0%</td>
<td>2.05%</td>
</tr>
<tr>
<td>2000-2010</td>
<td>13.4%</td>
<td>6.24%</td>
<td>9.7%</td>
<td>4.38%</td>
<td>6.6%</td>
<td>2.27%</td>
</tr>
</tbody>
</table>

Source: U.S. Immigration: National and State Trends and Actions (PEW, September 2013)

Given that each state has seen consistent growth in both documented and undocumented immigration since 1965, it is well within their respective interests to ensure their voting populations remain unburdened by illegal registrations. Such action is critical to promoting voter confidence and participation.

III. Observation 3: Predictability

While some critics of these state requests for amendments may argue that citizenship verification protocols adversely impact incoming citizens, international trends indicate the opposite — particularly among neighboring countries of the U.S. Both Mexico and Canada require that individuals seeking to register to vote must prove citizenship according to local protocols. Mexican citizens must affirmatively provide three separate categories of documentation in order to join their national register of voters.\(^2\) Potential voters in Mexico must prove citizenship, photographed identity and residence as prerequisites for registration.

Canada verifies citizenship and identity in a slightly different method, typically pairing the immigration process or birth registry with voter registration.\(^3\) Those unregistered via either process are to affirmatively contact Elections Canada and request registration materials. Applications to register are incomplete unless copies of documents proving identity and residence are attached.

Amending state instructions on the federal form will undoubtedly improve the confidence of natural-born American voters. Likewise, these amendments will lend greater legitimacy to the process for those immigrating to these three states. Realizing that such an important citizen function is treated less precisely in the U.S. than in their originating nation could indeed have an adverse impact on their willingness to participate.

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\(^2\) Instituto Federal Electoral; Consulta la lista de documentos que debes presentar para realizar tu trámite (http://www.ife.org.mx/portal/site/ifev2/Detalle_Credencial_para_Votar/?ynextoid=a7e237b5af4dd110VgnVCM1000000c68000aRCRD)

\(^3\) Elections Canada; FAQs on Registration (http://www.elections.ca/content.aspx?section=vot&dir=faq&document=faqreg&lang=e#a1)
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0368
Comment from Tomas Lopez

Submitter Information

Name: Tomas Lopez
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Organization: League of Women Voters (submitted by Brennan Center)

General Comment

1) Signed version of Declaration of Robyn Prud’homme-Bauer, Arizona League of Women Voters; 2) Signature page to Declaration of Dolores Furtado, Kansas League of Women Voters

Attachments

1.3.14 Arizona League Declaration
Furtado signature page
BEFORE THE UNITED STATES
ELECTION ASSISTANCE COMMISSION

In the Matter of Notice and Request for Public Comment
on State Requests to Include Additional Proof-of-
Citizenship Instructions on the National Mail Voter
Registration Form

Docket # EAC-2013-0004

DECLARATION OF ROBYN PRUD’HOMME-BAUER

I, Robyn Prud’homme-Bauer, hereby state, under penalty of perjury, that the following
information is true to my knowledge, information, and belief:

Personal Background and Position

1. I am currently the President of the League of Women Voters of Arizona. I
accepted my nomination to this position in November 2013.

2. Prior to my appointment as the President of the League of Women Voters of
Arizona, I served as Vice President from 2010 to 2013 and as a board member 10 years before
that. Prior to moving to Arizona, I was President of the League of Women Voters of California
from 1991 to 1993.

3. In my capacity as President of the League of Women Voters of Arizona, I oversee
the operations of our state organization both administratively and programmatically. I am the
League’s primary spokesperson to the public. A large part of my job involves communicating
with our local affiliates, staying in contact with them, and being aware of their activities. Each of
the local Leagues has a representative on our state board, and so this contact is typically quite
close.
4. The League of Women Voters of Arizona is a separately incorporated entity affiliated with the League of Women Voters of the United States. The Arizona League is a nonpartisan political organization that encourages informed and active participation in government. We promote this mission through voter service and civic education by registering voters, educating the public on voting rights and other public policy issues, and hosting events. We also promote our mission through action to advocate for public policies that comport with our mission and the public interest.

5. While the League's primary concern is voter participation, we care deeply about all of the elements necessary for a properly functioning electoral system. We are committed to both the effective administration of elections and to their overall integrity.

6. The Arizona League is active throughout the state, with five local affiliates and more than 460 members.

7. The Arizona League and its local affiliates have run voter registration drives since their founding, focusing on communities with a history of lower participation in elections and people who are less likely to have proof of citizenship, such as minorities, women, students, younger voters, the poor, and the elderly. The League concentrates its voter registration drives at locations that reach large numbers of unregistered voters, such as high schools, community colleges, sporting events, fairs, and naturalization ceremonies.

8. I first joined the League in California in 1976, and I remained active in the organization as soon as I moved to Arizona seventeen years ago. In my years in Arizona, I have led and participated in voter registration activities, advocated before and consulted with state and local election officials on matters relating to voter registration, and interacted with members of
the public who our organization seeks to help register to vote and otherwise encourage to participate in government.

**Challenge to Arizona’s Documentary Proof of Citizenship Requirement**

9. In November 2004, Arizona voters passed Proposition 200, which was then codified at A.R.S. §16-166(F). Under that provision, which went into effect on January 24, 2005, prospective voters in Arizona must provide documentary evidence of United States citizenship in order to register to vote.

10. In 2006, the Arizona League was one of two groups of plaintiffs who filed lawsuits against the State of Arizona and its fifteen counties, claiming, among other things, that Arizona’s proof of citizenship requirement could not be applied to the federal voter registration form ("federal form") as administered by the U.S. Election Assistance Commission ("EAC"). After years of litigation, the U.S. Supreme Court issued its opinion in *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2013), on June 17, 2013. The Court held that Arizona must accept and use the federal form developed by the EAC to register voters for elections for federal office, and that the state could no longer require documentary proof of citizenship from people registering to vote with the federal form.


12. On November 21, 2013, the Arizona League filed a motion to intervene as a defendant in that lawsuit to oppose the state’s attempt to have the EAC modify the federal form
to require documentary proof of citizenship. The court granted our motion on December 12, 2013.

13. The Arizona League publicly opposed Proposition 200 prior to its enactment, and continues to oppose the Arizona statute that mandates registering voters to furnish documentary proof of their citizenship with their applications, as well as any modification to the federal form reflecting this requirement. The League has expressed this opposition in its participation in several lawsuits challenging this requirement, as well as in public statements.

14. The Arizona League refutes the state’s contention that its documentary requirement is necessitated by electoral fraud. The League has registered voters in Arizona for decades, and many of our members have years of experience dealing with both applicants and the procedures by which they register to vote. We explain the voter registration form and process to our applicants, make sure they understand what they are signing and what it means, and verify with our applicants that their signed form is correct.

15. I have worked closely with Arizona election officials since becoming involved with the League here seventeen years ago and have never been notified of any significant problem relating to non-citizen voting in the state. It is my understanding that this is also true for my fellow League leaders at both the state and county levels.

Harmful Effects of Arizona’s Documentary Proof of Citizenship Requirement

16. Arizona’s documentary proof of citizenship requirement has damaged our organization’s voter registration efforts. Based on the experiences of the League and its local affiliates, I believe that the proof of citizenship requirement has made registering voters more complicated and has hindered or deterred some individuals from registering to vote. As a result, notwithstanding all of our best efforts, we are registering fewer voters.
17. The League’s experience is that Arizona’s documentary requirement has made registering voters both more cumbersome and less effective than it was in the past.

18. In my local League where I live, Eastern Yavapai County, our members now hand out information to prospective voters about registering to vote but do not complete the registration process because of the proof of citizenship requirement. I have been active in this affiliate, and we adopted this practice because our members found the registration process to be too complicated and not even feasible logistically because of that requirement. I understand that, in order to comply with the proof of citizenship law, we would have to make photocopies of people’s identifying documents. That is not feasible logistically for many of our League’s activities, which often involve setting up outdoors near high-traffic locations like grocery stores.

19. Our affiliate in Tucson tells me that they have tried to develop a system to work as best they can under the proof of citizenship requirement. I understand that when the Tucson League conducts a voter registration drive, its members typically give applicants a form that they then fill out and return to a League member, with or without documentary proof of citizenship. The League member then gives a receipt to the applicant and delivers the form to the County Recorder, the official in charge of elections. I understand that we inform applicants that the County Recorder’s office will likely be in touch.

20. It is my understanding that the Tucson League submits these forms to the County Recorder without regard as to whether they include documentary proof of citizenship. Our members in Tucson tell me that their county elections official does a good job at following up with people and attempting to obtain the necessary documents from them.

21. Our local League in Eastern Yavapai County does not carry registration forms to our county election official because the official is a long distance from us and doing so would be
logistically difficult. Our members there also worry that doing so would make us responsible for verifying the information provided to us by applicants.

22. I also understand from our League members that the documentary requirement has also hindered our voter registration work by making it very difficult to confirm how many people we actually register.

23. For instance, in my home League of Eastern Yavapai County, all we can do now is count the forms that we receive at a given event and try to track how many people visit our table. We cannot confidently say how many people we have registered to vote since they will not become registered unless they provide documentary proof of citizenship to election officials.

24. Our Tucson affiliate similarly reports that, while they can track how many people they come into contact with, the act of completing registration ultimately rests with the County Recorder and the individual attempting to register.

25. To my knowledge, at least three of our local Leagues maintained effective records prior to the proof of citizenship law’s implementation. Based on these records and as reflected in statements by one of my predecessors, each of these three local affiliates registered about 100 people per year. That adds up to 300 people per year and does not account for other local affiliates.

26. Today, as demonstrated above in our current practices, we have no effective way to track our registrations.

27. In the League’s experience, this proof of citizenship law has also made registering to vote more difficult for eligible citizens who cannot produce the necessary documentation.

28. We see this in Tucson, where I understand that the local affiliate is especially active in trying to register voters in places with high concentrations of the elderly, like senior
housing communities and assisted living facilities. Our members in Tucson report that they encounter individuals who simply lack documentation, cannot find documentation, or are willing to obtain documentation but cannot drive in order to do so.

29. One League member in Tucson informed me that their group held an event at a public library and attempted to register a blind man who lacked any documentation that could identify him as a citizen. Ultimately, all they could do was provide this gentleman with a form and attempt to connect him with someone who could assist him.

30. Arizona’s requirement has been around long enough that we can also point to other examples of how this law has made registering to vote more difficult for eligible citizens. For example, in Gonzalez v. Arizona, Case No. 2:06-cv-01268-PHX-ROS, slip op. (D. Az. Aug. 20, 2008), the case that eventually led to the Supreme Court’s decision, the district court found that after Arizona enacted the documentation requirement in 2004, over 30,000 people were initially unable to register to vote because of the requirement. Id. at 13. The court also found that a disproportionate number of those applicants were Latino. Id. Moreover, while approximately 11,000 of those applicants subsequently were able to register to vote, about 20% of the remaining 20,000 unsuccessful applicants were Latino. Id. at 14.

Contact with Local Officials and Attempts to Respond to the Law

31. In seeking guidance for conducting registration drive under the new law, several League affiliates have spoken to their county election officials and received varying degrees of assistance.

32. The League affiliate where I live and have been active, Eastern Yavapai County, has a fairly positive relationship with our local election official, who keeps us apprised about important dates and has been responsive to our questions on topics like voting machines.
However, we have not raised the possibility of hand-delivering registrations because of how cumbersome it would be for us.

33. Our affiliate in Tucson reports that it has a cooperative relationship with the Pima County Recorder’s Office. Our members tell me that they have communicated questions to individuals in that office and received responses. They also tell me that the office does a good job of following up with people who have submitted incomplete voter registration applications.

34. Our League members and affiliates have attempted to respond proactively to the challenges posed by Arizona’s documentary requirement.

35. I understand from our League affiliates that some members are attempting to circumvent the challenges of registering individuals with paper forms by bringing computers to voter registration events and assisting people with registering online. It is my understanding that a person who obtained an Arizona driver’s license after 1996 can submit their driver’s license number but need not provide a copy of the document itself if registering over the internet.

36. I understand that our local League in Northwest Maricopa County is sometimes able to conduct events at local libraries, where our members can use wireless internet access to register voters with a computer.

37. Our local League in Tucson reports that it has printed out cards with information about the proof of citizenship requirement, alongside other general voter registration information. These cards are distributed through the Pima County Library System.

38. I also understand that the Tucson League is starting a program to attempt to help individuals obtain documentary proof of citizenship. The League there plans on training office staff so that they will be able to help guide members of the public through the process of
obtaining these documents. Since local affiliates such as the Tucson League have no budget, this program is a significant time investment.

39. The Arizona proof of citizenship law has hindered our organization’s voter registration efforts by complicating the logistics of registering voters, putting up barriers to eligible voters, necessitating new advocacy and relief efforts, and costing the League and its local affiliates substantial time and resources.

40. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of January, 2014.

Robyn Prud’homme-Bauer
President,
League of Women Voters of Arizona
of our efforts, necessitating new advocacy, and costing our volunteer, non-profit organization substantial time and resources.

38. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3 day of January, 2014.

Dolores Furtado
President
League of Women Voters of Kansas
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0369
Comment from Judith Pickrell

Submitter Information

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Phone: 785-392-237

General Comment

"I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!"
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0370
Comment from David Jones

Submitter Information

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   6682 Kimberly Dr
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General Comment

It seems logical that proof of citizenship should be required to perform the most sacred act of voting.
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0371
Comment from Tomas Lopez

Submitter Information

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Organization: League of Women Voters

General Comment

Addendum to Comment of League of Women Voters of the United States, League of Women Voters of Arizona, and League of Women Voters of Kansas

Attachments

Kobach.EAC.Leonard.affadavit (1)

Dolores Furtado Decl FINAL

Robyn Prud'homme-Bauer Decl FINAL
BEFORE THE UNITED STATES
ELECTION ASSISTANCE COMMISSION

In the Matter of Notice and Request for Public
Comment on State Requests to Include Additional
Proof-of-Citizenship Instructions on the National
Mail Voter Registration Form

Docket # EAC-2013-0004

DECLARATION OF LLOYD LEONARD

I, Lloyd Leonard, hereby state, under penalty of perjury, that the following
information is true to my knowledge, information, and belief:

Personal Background and Position

1. I am the Senior Director for Advocacy for the League of Women Voters
   of the United States. I have held that position since 1983. I have worked for the
   organization on public policy issues since 1977.

2. As Senior Director for Advocacy, I am responsible for all aspects of the
   League’s advocacy on public policy issues, including especially those relating to election
   administration and voting. The League’s work on election administration and voting
   includes public education, congressional relations, advocacy with administrative
   agencies, work with the media, litigation and advocacy and public education at the state
   and local levels.

3. I have worked on issues of election administration for more than 25 years.
   Throughout that time, the question of enforcing voter eligibility requirements has been
   one of the issues on which I have represented the League in deliberations by Congress,
state governments and federal agencies. I have also worked on issues involving immigration and non-citizens for the last five years.

4. A significant part of my research and advocacy at the League of Women Voters relates to voter registration. Among other things, I advocated in favor of the National Voter Registration Act of 1993 ("NVRA") and the Help America Vote Act of 2002 ("HAVA"), including the creation of the U.S. Election Assistance Commission ("EAC"). I have testified before and worked with members of Congress and with EAC and Federal Election Commission ("FEC") commissioners and staff on multiple occasions concerning issues of voter registration and election administration, including the submission of formal testimony and statements.

5. I have personally directed or been involved in all of the League's efforts on federal voter registration and other election administration issues since before the enactment of the NVRA in 1993.

6. I have also advised the League's state affiliates across the country, including the affiliates in both Arizona and Kansas, on matters relating to voter registration.

League of Women Voters of the United States

7. The League of Women Voters of the United States ("the League") is a nonpartisan, community-based organization that promotes political responsibility by encouraging Americans to participate actively and knowledgably in government and the electoral process.
8. The League was founded in 1920 as an outgrowth of the struggle to win voting rights for women, now has more than 140,000 members and supporters, and is organized in more than 800 communities and in every state.

9. The League has worked to protect every U.S. citizen's right to vote since its founding. As part of this mission, the League—with its state and local affiliates—operates one of the longest-running and largest nonpartisan voter registration efforts in the nation. It also aims to educate people about their voting rights and what they need to do to vote.

10. The League concentrates its voter registration drives at locations that reach large numbers of unregistered voters, such as high schools, community colleges, sporting events, and naturalization ceremonies.

11. The League operates a voter information website, VOTE.411, that provides voting and candidate information in states across the country, and offers an opportunity to use the federal voter registration form.

12. The League has been a leader in efforts to remove unnecessary barriers to registering to vote and casting a ballot. To that end, the League has historically endorsed the adoption of simple, uniform voter registration forms that can be submitted through the mail without additional documentary requirements.

13. The League also supports sound policy measures to safeguard the integrity of the election process and to prevent fraud and misconduct.

14. In its voter registration and engagement activities, the League also promotes election integrity, working closely with local election officials and establishing careful procedures to promote election integrity. For example, League members
carefully explain the voting qualifications and requirements to register to vote to potential registration applicants and work to ensure that voter registration forms are complete and accurate.

Advocacy Relating to the NVRA and the EAC

15. The League strongly supported the enactment and works to fully implement and enforce the National Voter Registration Act of 1993 (NVRA), a statute aimed at increasing the number of eligible citizens who register to vote by providing for uniform, non-discriminatory voter registration procedures.

16. The League testified before Congress in favor the NVRA and has advocated on issues relating to national mail-in registration application ("federal form") created by that statute in numerous forums.

17. The League also worked to ensure that regulations promulgated in 1994 and in subsequent years would be consistent with the terms of the NVRA and would not allow states to require documentary proof of citizenship or other documentation with the federal form. The League has consistently opposed efforts to include documentary proof of citizenship requirements and other restrictions on the federal form.

18. The League has submitted comments to the FEC and the EAC on each of the notice-and-comment rulemakings concerning the NVRA, including the 1994 rulemaking in which the FEC first created the federal form, the 2009 administrative transfer of authority over the federal form from the FEC to the EAC, and the 2010 rulemaking. The League commented on the development of EAC procedures and testified on NVRA implementation before the agency. In addition, the League has also communicated with the EAC informally on various occasions concerning the federal
form and voter registration. Throughout these communications, the League has consistently supported keeping the federal form simple and not adding unnecessary documentary requirements that serve little purpose other than to hinder or chill voter registration.

19. The FEC and the EAC received numerous comments during their rulemaking processes regarding the federal form, including, I understand, from Arizona and Kansas, which submitted comments in 1994.

20. The issue of documentary proof of citizenship has come up before Congress and the EAC during consideration of the NVRA and HAVA and the implementation of both of those laws, and I understand that the FEC carefully considered what information is necessary on the federal form to enforce citizenship eligibility requirements. States and other interested parties have had many opportunities to comment on these issues before Congress and federal agencies.

21. The League strongly supported the creation of the EAC in HAVA and has consistently advocated with the agency for strong procedures and decisions that strengthen the agency, promote the goals of the NVRA, and protect the right to vote.

Documentary Proof of Citizenship

22. Based on my years of experience and study working on these election administration issues, including matters involving non-citizens, it is my belief that documentary proof of citizenship is not necessary for states to assess the qualifications of their electors.

23. States have numerous means at their disposal to verify citizenship without requiring registration applicants to provide documentary proof.
24. Under the NVRA and HAVA, the federal form requires applicants to indicate twice on the form that they are citizens — by means of both a signed statement under penalty of perjury indicating that they meet eligibility requirements (including citizenship) and a box the applicant must check indicating citizenship.

25. Illegal registration and voting by non-citizens is a felony offense under federal law, punishable by up to five years in prison and $10,000 in fines. 42 U.S.C. § 15544(b); 18 U.S.C. § 1015(f). It is also a crime under state laws, including the laws of Kansas (K.S.A. § 25-2416) and Arizona (A.R.S. §§ 16-182, 16-1016). Further, a non-citizen who commits one of these crimes is subject to removal from the United States under the immigration laws. 8 U.S.C. § 1182(a)(6)(C)(i)(I). These penalties are significant deterrents to voter fraud, including non-citizen registration and voting.

26. HAVA and the NVRA require all states to adopt other safeguards against voter fraud as well. For instance all states must attempt to match voter registration records against state motor vehicle records or federal Social Security records for the purpose of verifying the accuracy of the voter rolls. 42 U.S.C. § 15483(a)(2). In addition, all states must adopt programs to remove ineligible people from the voter rolls.

27. Congress deemed these protections sufficient to protect against voter registration and voter fraud. In doing so, Congress was well aware of the fact that occasionally ineligible people (and even dogs) become inappropriately registered to vote.

28. Voter registration lists are publically available. Interested persons who believe a registered voter may not be eligible may bring the issue to the attention of election officials. Political parties and candidates have an incentive to police the voter
rolls and check whether ineligible individuals are registered or attempt to vote and have
done so in the past.

29. States have also used responses to jury questionnaires and motor vehicle
databases to check the citizenship of individuals on the voter rolls. While those methods
do not always conclusively determine that an individual is a non-citizen, they are useful
in creating a limited list of individuals whose eligibility is in question for election
officials to investigate.

30. I understand that a number of states, including Arizona, Colorado, and
Florida, use the federal Systematic Alien Verification for Entitlements (SAVE) program
to check the immigration status of registration applicants or registered voters. I am also
informed that Kansas has also recently sought access to SAVE but, to my knowledge, has
not yet been granted such access. States wishing to use SAVE may do so by seeking to
enter into a memorandum of agreement with U.S. Citizenship and Immigration Services
("USCIS").

31. The SAVE program allows states to search up to 14 federal databases for
information on the individual’s immigration or naturalization status using the individual’s
alien number or number found on a variety of other immigration documents. State
election officials can obtain the relevant identification numbers for voter registrants by
querying their motor vehicle office databases or other state databases. While attempts to
use the SAVE program to verify the eligibility of voter registration applicants can
sometimes erroneously indicate that an individual is a non-citizen, it is a helpful tool to
identify potential non-citizen applicants whose eligibility requires further investigation.
32. Based on my experience working on issues involving non-citizens, it is unsurprising that few non-citizens have attempted to register to vote or cast ballots. Non-citizens tend to avoid calling attention to themselves and to avoid legal problems at all costs, and putting one’s self at risk of deportation or criminal action to cast one illegal ballot makes little sense.

33. In my extensive experience, I have not come across any evidence that existing measures fail to provide states the necessary tools to check citizenship status of voter registration applicants or that documentary proof requirements would work better than existing measures.

34. Based on my experience, voter registration errors often occur due to administrative or clerical mistakes by government officials rather than through applicant error.


36. It is also my understanding that large-scale investigations of alleged voter fraud have also led to few findings of illegal voting on a significant scale. An investigation by the Department of Justice conducted between 2002 and 2005 led to only 21 prosecutions for alleged non-citizen registration or voting nationwide and similarly low numbers of prosecutions for illegal voting. See Levitt, supra para. 34, at n. 146.
37. Reported instances of non-citizen registration and voting tend to be inaccurate or wildly exaggerated. In my years as an election observer, I have occasionally heard claims of non-citizen registration and voting that subsequently evaporate upon investigation. For example, in 2011, Colorado’s Secretary of State claimed that up to 16,000 non-citizens were illegally registered. See Nancy Lofholm, *Gessler Pushes for Citizen Proof When Voters Register*, Denver Post (Jan. 28, 2011), http://www.denverpost.com/ci_17223388. But after extended investigations the number was reduced to 155, and ultimately only 4 individuals were charged. See Lynn Bartels, *Arapahoe DA Charges Four After Voter-Fraud Investigation in Colorado*, Denver Post (Nov 22, 2013), http://www.denverpost.com/breakingnews/ci_24579855/arapahoe-da-charges-four-after-voter-fraud-investigation. In Florida in 2011, the Secretary of State claimed to have found 180,000 nonecitizens on the rolls, but after investigation, that number was reduced to 2,600, then to 207, and finally to 1 prosecution. See Toluse Olorumnipa, *Florida’s Scott Rolls Political Dice With New Voter Purge*, Bloomberg News (Aug. 9, 2013), http://www.businessweek.com/news/2013-08-09/florida-s-scott-takes-political-gamble-with-renewed-voter-purge.

38. On the other hand, documentary proof of citizenship requirements have negative impacts on voters. Studies demonstrate that many voting-eligible American citizens do not have ready access to documentary proof of citizenship. These include *Citizens without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice, (November 2006), http://www.brennancenter.org/analysis/citizens-without-proof (survey finding that 7% of voting-age Americans, and 12% of those making less than $25,000 per year, lack ready
access to documentary proof of citizenship, and that only 66% of voting-age women
with ready access to documentary proof of citizenship have a document with a current
legal name).

39. It is my own view, as well as the position of the League, that the sanctity
of our elections is of paramount importance, but documentary proof of citizenship
requirements do little to safeguard our elections. In fact, these requirements harm our
election process by posing needless barriers to voting and by frustrating the intent of
federal law to simplify the voter registration process for American citizens.

40. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the
laws of the United States of America that the foregoing is true and correct.

Executed this ___ day of January, 2014

Lloyd Leonard
Senior Director for Advocacy
League of Women Voters of the United States
BEFORE THE UNITED STATES
ELECTION ASSISTANCE COMMISSION

In the Matter of Notice and Request for Public Comment
on State Requests to Include Additional Proof-of-
Citizenship Instructions on the National Mail Voter
Registration Form

Docket # EAC-2013-0004

DECLARATION OF DOLORES FURTADO

I, Dolores Furtado, hereby state, under penalty of perjury, that the following information
is true to my knowledge, information, and belief:

Personal Background and Position

1. I am currently the President of the League of Women Voters of Kansas. I
accepted my nomination to this position on April 27, 2013.

2. Prior to my appointment as the President of the League of Women Voters of
Kansas, I served as Co-President of the Johnson County, Kansas League from 2000 to 2002. In
the time between my presidencies of the county and state organizations, I held elected office as a
member of the Johnson County Commission and then the Kansas State Legislature. I remained
involved with the League during this period.

3. In my capacity as President of the League of Women Voters of Kansas, I
coordinate the activities of our local affiliates on a range of statewide issues. As part of that, I
communicate with our local affiliates and am kept apprised of their activities. We often respond
to policy matters pending before the Legislature. I also remain active in my local League in
Johnson County.
4. The League of Women Voters of Kansas is a separately incorporated entity affiliated with the League of Women Voters of the United States. The Kansas League is a nonpartisan political organization that encourages informed and active participation in government. For nearly 95 years, we have promoted this mission through voter service and civic education by registering voters, educating the public on voting rights and other public policy issues, and hosting events. We have also promoted our mission through action to advocate for public policies that comport with our mission and the public interest.

5. While the League’s primary goal is to promote political participation, our mission encompasses promotion of a properly functioning electoral system. We are committed to the effective administration of elections and to their overall integrity.

6. The Kansas League is active throughout the state, with nine local affiliates and more than 750 members.

7. The Kansas League and our local affiliates have run voter registration drives since our founding, focusing on communities with a history of lower participation in elections and people who are less likely to have proof of citizenship, such as minorities, women, students, younger voters, the poor, and the elderly. The Kansas League concentrates its voter registration drives at locations that reach large numbers of unregistered voters, such as high schools, community colleges, sporting events, fairs, and naturalization ceremonies.

8. I first joined my local League in Johnson County in 1991. In the years since, I have led and participated in voter registration activities, led campaigns and studies on a range of public policy matters, advocated before and consulted with state and local election officials on such issues, including those relating to voter registration, and interacted with members of the
public who our organization seeks to help register to vote and otherwise encourage to participate in government.

Challenge to Kansas’s Documentary Proof of Citizenship Requirement

9. In 2011, the Kansas legislature passed and the Kansas Governor signed into law HB 2067, the “Secure and Fair Elections Act,” which amended various Kansas statutes concerning elections in the State of Kansas. HB 2067 took effect on January 1, 2012. Under HB 2067, in order to register to vote, applicants must submit documentary proof of citizenship. The proof of citizenship provisions of HB 2067 took effect on January 1, 2013.

10. The Kansas League has publicly opposed the Kansas statute that mandates registering voters to furnish documentary proof of their citizenship with their applications, as well as any modification to the national mail-in voter registration form (“federal form”) reflecting this requirement. League members and the former Kansas League President testified before the Kansas Legislature to voice their opposition to the law before its passage. We have expressed our opposition in League materials and through our participation in Kobach, et al. v. U.S. Election Assistance Commission, No. 13-4095-EFM-DJW (D. Kan., Aug. 21, 2013).

11. On August 21, 2013, Kansas, along with Arizona, filed suit against the U.S. Election Assistance Commission (“EAC”), seeking to compel the EAC to modify the state-specific instructions to the federal form to reflect its documentary proof of citizenship requirements. Kobach v. EAC.

12. On November 21, 2013 the Kansas League filed a motion to intervene as a defendant in that lawsuit to oppose the state’s attempt to have the EAC modify the federal form to require documentary proof of citizenship. The court granted our motion on December 12, 2013.
13. The Kansas League refutes the Secretary of State’s contention that the documentary proof requirement is necessitated by electoral fraud. The League has registered voters in Kansas for over ninety years, and many of our members have years of experience dealing with both applicants and the procedures by which they register to vote. Our organizational practice is to clearly and consistently explain eligibility requirements to every individual we register, ensure that individuals understand the form that they are signing and what it means, and verify that the form has been properly filled out.

14. I have worked closely with Kansas election officials throughout my years of involvement with the League and have never been notified of any significant problem relating to non-citizen voting in the state. It is my understanding that this is also true for my fellow League leaders at both the state and county levels.

**Harmful Effects of Kansas’s Documentary Proof of Citizenship Requirement**

15. The documentary proof of citizenship requirement has hindered our local affiliates’ voter registration efforts. Based on the experiences of the League and its local affiliates, I believe that the process of registering voters has become more complicated under this law. As a result, notwithstanding all of our efforts, we are registering fewer voters in Kansas.

16. I understand that there is also considerable confusion among members of the public about this law.

17. For instance, our members in Douglas County report expending considerable time contacting individuals with incomplete registrations who end up on suspense lists. Our affiliate there tells me that they have gone door to door to attempt to reach people, and that one member reports spending 40 hours on this over a three month period.
18. The requirements have made it significantly harder for the Kansas League affiliates to continue to register voters. The new process requires equipment, like a photocopier, that lengthens and complicates the registration process. Additionally, neither our members nor many members of the public are comfortable with our having responsibility for the sensitive documents now needed to complete voter registrations. In practice, this means that our members often cannot complete the registration process themselves, as I will illustrate with examples from our affiliates.

19. All of our League affiliates report a dramatic decrease in the number of voters they were able to register in 2013, since the new law has been in effect.

20. Our affiliate in Douglas County informs me that it has markedly reduced its activities under the proof of citizenship law. I understand that, in 2012, the League there registered over 300 voters across more than 12 events. However, League members there report that they registered far fewer in 2013: only about 12 individuals at public events, and another 25 individuals at a naturalization ceremony.

21. Our members in Douglas County also report that they secured a photocopy machine to use at a naturalization ceremony in 2013, but that using the machine lengthened the registration process such that some individuals gave up on attempting to register. Additionally, our members there report encountering individuals who did not want their naturalization certificates to be copied.

22. In Riley County, our local affiliate has scaled back its activities. I understand that, previously, our members used to set up a table at community events and register attendees. However, I understand that our members there are now unwilling to handle people’s citizenship documents. As a result, we can only partially help voters there to register. I also understand that
our members there also do not follow up with prospective voters because they do not want to collect personal information.

23. I understand that our affiliate in Shawnee County stopped all of its voter registration activity after the proof of citizenship requirement went into effect. The group resumed registering voters at only a single type of event: naturalization ceremonies. Our local affiliate tells me that it registers voters at these ceremonies because people are guaranteed to have proof of citizenship physically with them.

24. Our Shawnee County affiliate reports that, since the law has gone into effect, our members have only registered voters when they are able to take photos of an individual’s naturalization certificate with a camera provided by local election officials. Our members adopted this measure to ensure that we were compliant with the law and because our members were concerned about storing this data on a camera belonging to a member or the League. We store the images on that camera, but it is my understanding that we may not be able to do this on a camera that belonged to the League or one of its members, and other localities may not accept digital photographs of documents.

25. The Shawnee County League registered more than 800 people in 2012, before the proof of citizenship requirement was in effect. I understand that our members there expect that the total registered in 2013 will amount to a much lower number.

26. Our members in Johnson County tell me that, after the proof of citizenship law went into effect, they decided to suspend their voter registration activity and did not hold an event in 2013 until the month of May. By contrast, I understand that, in 2012, that affiliate registered over 900 people between May and September alone, and would typically register approximately 500 people at naturalization ceremonies in a given year.
27. I understand that our Johnson County affiliate met in August with the county election official, Brian Newby, who provided the organization with a government-owned iPad that our members could use to take photographs of naturalization certificates at naturalization ceremonies. It is my understanding that our members find this helpful but that they do not know whether they can use the iPad outside of naturalization ceremonies.

28. To my knowledge, our Leavenworth County affiliate registered at least 50 voters in 2012. I also understand that the League attempted three different registration events there in 2013 and failed to register a single voter at these events.

Contact with Local Election Officials

29. In seeking guidance for conducting registration drive under the new law, several League affiliates have spoken to their county election officials and received varying degrees of assistance.

30. I understand that our Riley County affiliate has had a communicative relationship with local election officials in that area. To my knowledge, officials informed our members that the county attempts to register people who file incomplete registrations. However, it is my understanding that only about half of the individuals on the county’s suspense list have been registered to vote.

31. To my knowledge, county election officials informed our affiliate in Leavenworth County that our members should now use state voter registration forms to register voters. I understand that they previously used the federal voter registration form.

32. To my knowledge, our affiliate in Shawnee County has received assistance from election officials there. Our members reached out to county election officials with questions about how the League could register voters and turn in forms under the state’s requirement. It is
my understanding that, in response, election officials provided a camera with which our members could photograph naturalization certifications at the ceremonies in which they are issued. However, I also understand that we may not be able to take these photographs on a camera not provided by election officials.

33. Our affiliate in Douglas County informs me that our members there spoke with an election officer there named Ben Lampe, who encouraged our organization to continue to try to register individuals even if they do not have the necessary documentation. However, I understand from our members there that, while the county is attempting to follow up with individuals with incomplete registrations, only ten percent of those contacted have responded.

34. It is my understanding that our affiliate in Leavenworth County met with their county election official in October 2013, and that she provided the League with a copy of the county’s suspense list.

35. Our Johnson County affiliate reports that it has a cooperative relationship with its local election official, Brian Newby, who provided the League with a copy of the county’s suspense list. Our affiliate there also reports that Mr. Newby also provided our members with a government-owned iPad to take photos of documents at naturalization ceremonies, as described above.

36. Partly in response to the new documentary proof-of-citizenship requirement, the Kansas League has initiated a campaign, “Protect the Vote,” to educate voters about Kansas voting requirements. League members have thus far contributed more than $6,000 toward this effort.

37. The Kansas proof of citizenship law has hamstrung our League’s voter registration efforts by confusing League members and potential voters, complicating the logistics
of our efforts, necessitating new advocacy, and costing our volunteer, non-profit organization substantial time and resources.

38. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ___ day of January, 2014.

______________________________
Dolores Furtado
President
League of Women Voters of Kansas
BEFORE THE UNITED STATES
ELECTION ASSISTANCE COMMISSION

In the Matter of Notice and Request for Public Comment
on State Requests to Include Additional Proof-of-
Citizenship Instructions on the National Mail Voter
Registration Form

Docket # EAC-2013-0004

DECLARATION OF ROBYN PRUD’HOMME-BAUER

I, Robyn Prud’homme-Bauer, hereby state, under penalty of perjury, that the following
information is true to my knowledge, information, and belief:

Personal Background and Position

1. I am currently the President of the League of Women Voters of Arizona. I
accepted my nomination to this position in November 2013.

2. Prior to my appointment as the President of the League of Women Voters of
Arizona, I served as Vice President from 2010 to 2013 and as a board member 10 years before
that. Prior to moving to Arizona, I was President of the League of Women Voters of California
from 1991 to 1993.

3. In my capacity as President of the League of Women Voters of Arizona, I oversee
the operations of our state organization both administratively and programmatically. I am the
League’s primary spokesperson to the public. A large part of my job involves communicating
with our local affiliates, staying in contact with them, and being aware of their activities. Each of
the local Leagues has a representative on our state board, and so this contact is typically quite
close.
4. The League of Women Voters of Arizona is a separately incorporated entity affiliated with the League of Women Voters of the United States. The Arizona League is a nonpartisan political organization that encourages informed and active participation in government. We promote this mission through voter service and civic education by registering voters, educating the public on voting rights and other public policy issues, and hosting events. We also promote our mission through action to advocate for public policies that comport with our mission and the public interest.

5. While the League’s primary concern is voter participation, we care deeply about all of the elements necessary for a properly functioning electoral system. We are committed to both the effective administration of elections and to their overall integrity.

6. The Arizona League is active throughout the state, with five local affiliates and more than 460 members.

7. The Arizona League and its local affiliates have run voter registration drives since their founding, focusing on communities with a history of lower participation in elections and people who are less likely to have proof of citizenship, such as minorities, women, students, younger voters, the poor, and the elderly. The League concentrates its voter registration drives at locations that reach large numbers of unregistered voters, such as high schools, community colleges, sporting events, fairs, and naturalization ceremonies.

8. I first joined the League in California in 1976, and I remained active in the organization as soon as I moved to Arizona seventeen years ago. In my years in Arizona, I have led and participated in voter registration activities, advocated before and consulted with state and local election officials on matters relating to voter registration, and interacted with members of
the public who our organization seeks to help register to vote and otherwise encourage to participate in government.

**Challenge to Arizona’s Documentary Proof of Citizenship Requirement**

9. In November 2004, Arizona voters passed Proposition 200, which was then codified at A.R.S. §16-166(F). Under that provision, which went into effect on January 24, 2005, prospective voters in Arizona must provide documentary evidence of United States citizenship in order to register to vote.

10. In 2006, the Arizona League was one of two groups of plaintiffs who filed lawsuits against the State of Arizona and its fifteen counties, claiming, among other things, that Arizona’s proof of citizenship requirement could not be applied to the federal voter registration form (“federal form”) as administered by the U.S. Election Assistance Commission (“EAC”). After years of litigation, the U.S. Supreme Court issued its opinion in *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2013), on June 17, 2013. The Court held that Arizona must accept and use the federal form developed by the EAC to register voters for elections for federal office, and that the state could no longer require documentary proof of citizenship from people registering to vote with the federal form.


12. On November 21, 2013, the Arizona League filed a motion to intervene as a defendant in that lawsuit to oppose the state’s attempt to have the EAC modify the federal form
to require documentary proof of citizenship. The court granted our motion on December 12, 2013.

13. The Arizona League publicly opposed Proposition 200 prior to its enactment, and continues to oppose the Arizona statute that mandates registering voters to furnish documentary proof of their citizenship with their applications, as well as any modification to the federal form reflecting this requirement. The League has expressed this opposition in its participation in several lawsuits challenging this requirement, as well as in public statements.

14. The Arizona League refutes the state’s contention that its documentary requirement is necessitated by electoral fraud. The League has registered voters in Arizona for decades, and many of our members have years of experience dealing with both applicants and the procedures by which they register to vote. We explain the voter registration form and process to our applicants, make sure they understand what they are signing and what it means, and verify with our applicants that their signed form is correct.

15. I have worked closely with Arizona election officials since becoming involved with the League here seventeen years ago and have never been notified of any significant problem relating to non-citizen voting in the state. It is my understanding that this is also true for my fellow League leaders at both the state and county levels.

Harmful Effects of Arizona’s Documentary Proof of Citizenship Requirement

16. Arizona’s documentary proof of citizenship requirement has damaged our organization’s voter registration efforts. Based on the experiences of the League and its local affiliates, I believe that the proof of citizenship requirement has made registering voters more complicated and has hindered or deterred some individuals from registering to vote. As a result, notwithstanding all of our best efforts, we are registering fewer voters.
17. The League’s experience is that Arizona’s documentary requirement has made registering voters both more cumbersome and less effective than it was in the past.

18. In my local League where I live, Eastern Yavapai County, our members now hand out information to prospective voters about registering to vote but do not complete the registration process because of the proof of citizenship requirement. I have been active in this affiliate, and we adopted this practice because our members found the registration process to be too complicated and not even feasible logistically because of that requirement. I understand that, in order to comply with the proof of citizenship law, we would have to make photocopies of people’s identifying documents. That is not feasible logistically for many of our League’s activities, which often involve setting up outdoors near high-traffic locations like grocery stores.

19. Our affiliate in Tucson tells me that they have tried to develop a system to work as best they can under the proof of citizenship requirement. I understand that when the Tucson League conducts a voter registration drive, its members typically give applicants a form that they then fill out and return to a League member, with or without documentary proof of citizenship. The League member then gives a receipt to the applicant and delivers the form to the County Recorder, the official in charge of elections. I understand that we inform applicants that the County Recorder’s office will likely be in touch.

20. It is my understanding that the Tucson League submits these forms to the County Recorder without regard as to whether they include documentary proof of citizenship. Our members in Tucson tell me that their county elections official does a good job at following up with people and attempting to obtain the necessary documents from them.

21. Our local League in Eastern Yavapai County does not carry registration forms to our county election official because the official is a long distance from us and doing so would be
logistically difficult. Our members there also worry that doing so would make us responsible for verifying the information provided to us by applicants.

22. I also understand from our League members that the documentary requirement has also hindered our voter registration work by making it very difficult to confirm how many people we actually register.

23. For instance, in my home League of Eastern Yavapai County, all we can do now is count the forms that we receive at a given event and try to track how many people visit our table. We cannot confidently say how many people we have registered to vote since they will not become registered unless they provide documentary proof of citizenship to election officials.

24. Our Tucson affiliate similarly reports that, while they can track how many people they come into contact with, the act of completing registration ultimately rests with the County Recorder and the individual attempting to register.

25. To my knowledge, at least three of our local Leagues maintained effective records prior to the proof of citizenship law’s implementation. Based on these records and as reflected in statements by one of my predecessors, each of these three local affiliates registered about 100 people per year. That adds up to 300 people per year and does not account for other local affiliates.

26. Today, as demonstrated above in our current practices, we have no effective way to track our registrations.

27. In the League’s experience, this proof of citizenship law has also made registering to vote more difficult for eligible citizens who cannot produce the necessary documentation.

28. We see this in Tucson, where I understand that the local affiliate is especially active in trying to register voters in places with high concentrations of the elderly, like senior
housing communities and assisted living facilities. Our members in Tucson report that they encounter individuals who simply lack documentation, cannot find documentation, or are willing to obtain documentation but cannot drive in order to do so.

29. One League member in Tucson informed me that their group held an event at a public library and attempted to register a blind man who lacked any documentation that could identify him as a citizen. Ultimately, all they could do was provide this gentleman with a form and attempt to connect him with someone who could assist him.

30. Arizona’s requirement has been around long enough that we can also point to other examples of how this law has made registering to vote more difficult for eligible citizens. For example, in *Gonzalez v. Arizona*, Case No. 2:06-cv-01268-PHX-ROS, slip op. (D. Az. Aug. 20, 2008), the case that eventually led to the Supreme Court’s decision, the district court found that after Arizona enacted the documentation requirement in 2004, over 30,000 people were initially unable to register to vote because of the requirement. *Id.* at 13. The court also found that a disproportionate number of those applicants were Latino. *Id.* Moreover, while approximately 11,000 of those applicants subsequently were able to register to vote, about 20% of the remaining 20,000 unsuccessful applicants were Latino. *Id.* at 14.

**Contact with Local Officials and Attempts to Respond to the Law**

31. In seeking guidance for conducting registration drive under the new law, several League affiliates have spoken to their county election officials and received varying degrees of assistance.

32. The League affiliate where I live and have been active, Eastern Yavapai County, has a fairly positive relationship with our local election official, who keeps us apprised about important dates and has been responsive to our questions on topics like voting machines.
However, we have not raised the possibility of hand-delivering registrations because of how cumbersome it would be for us.

33. Our affiliate in Tucson reports that it has a cooperative relationship with the Pima County Recorder’s Office. Our members tell me that they have communicated questions to individuals in that office and received responses. They also tell me that the office does a good job of following up with people who have submitted incomplete voter registration applications.

34. Our League members and affiliates have attempted to respond proactively to the challenges posed by Arizona’s documentary requirement.

35. I understand from our League affiliates that some members are attempting to circumvent the challenges of registering individuals with paper forms by bringing computers to voter registration events and assisting people with registering online. It is my understanding that a person who obtained an Arizona driver’s license after 1996 can submit their driver’s license number but need not provide a copy of the document itself if registering over the internet.

36. I understand that our local League in Northwest Maricopa County is sometimes able to conduct events at local libraries, where our members can use wireless internet access to register voters with a computer.

37. Our local League in Tucson reports that it has printed out cards with information about the proof of citizenship requirement, alongside other general voter registration information. These cards are distributed through the Pima County Library System.

38. I also understand that the Tucson League is starting a program to attempt to help individuals obtain documentary proof of citizenship. The League there plans on training office staff so that they will be able to help guide members of the public through the process of
obtaining these documents. Since local affiliates such as the Tucson League have no budget, this program is a significant time investment.

39. The Arizona proof of citizenship law has hindered our organization’s voter registration efforts by complicating the logistics of registering voters, putting up barriers to eligible voters, necessitating new advocacy and relief efforts, and costing the League and its local affiliates substantial time and resources.

40. Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this ___ day of January, 2014.

______________________________
Robyn Prud’homme-Bauer
President,
League of Women Voters of Arizona
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0372
Comment from Joe Stout

Submitter Information

Name: Joe Stout
Address:
    150 S Old Manor
    Wichita, KS, 67218

General Comment

I live in Kansas. The EAC must update the National Mail Voter Registration Form to include instructions that Kansas requires a copy of one of 13 documents to verify that the applicant using the federal form is a citizen of the United States. This will create chaos in Kansas if you don't do this!
PUBLIC SUBMISSION

Docket: EAC-2013-0004
National Mail Voter Registration Form

Comment On: EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

Document: EAC-2013-0004-0373
Comment from Clifford Koehn

Submitter Information

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General Comment

EAC is required to update the National Mail Voter Registration Form to include state specific instructions, including the Kansas requirement to supply a copy of one of 13 documents, to verify that the applicant using the Federal form is a citizen of the United States.

Refusal of the EAC to do its job, in a limited case - that of protecting Kansas voter rolls from including non-citizens is a refusal to maintain the federal form, which is the commission's only regulatory authority. Not only is this a violation of the requirement, it makes it very confusing for a potential voter. Why make the process more difficult?
All 50 states and DC have state specific requirements, so Kansas is not unique in that regard. Naturalized Citizens have proof of citizenship. Not including the State of Kansas proof of US citizenship requirements, on the Federal form, is unnecessarily confusing and may actually disenfranchise potential voters, through incorrect and outdated Kansas-specific instructions.
PUBLIC SUBMISSION

**Docket:** EAC-2013-0004
National Mail Voter Registration Form

**Comment On:** EAC-2013-0004-0001
National Mail Voter Registration Form: State Requests to Include Additional Proof-of-Citizenship Instructions

**Document:** EAC-2013-0004-0374
Comment from Tomas Lopez

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**Submitter Information**

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**Organization:** League of Women Voters

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**General Comment**


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**Attachments**

Comment LWV 1-3

Consolidated Attachments
January 3, 2014

ATTN: NVRA Federal Form Comments

U.S. Election Assistance Commission
1335 East West Highway
Suite 4300
Silver Spring, MD 20910
Electronic Submission via Federal eRulemaking Portal
http://www.regulations.gov

RE: EAC Review of State Requests to Include Documentary Proof of Citizenship on
Federal Voter Registration Application Form, Docket No. EAC-2013-0004

Dear Ms. Miller:

On behalf of the League of Women Voters of the United States, the League of
Women Voters of Arizona, and the League of Women Voters of Kansas (together, “the
League”), intervenor-defendants in Kobach v. United States Election Assistance
Commission, No. 5:13-CV-4095 (D. Kan.), we respectfully submit this Comment in
response to the Notice and Request for Public Comment issued on December 20, 2013
concerning the requests by the Secretaries of State of Kansas and Arizona for the U.S.
Election Assistance Commission (the “EAC” or the “Commission”) to modify the
national mail-in voter registration form (the “Federal Form”) in order to require voter
registration applicants to supply documentary proof of citizenship with that form. We
write to urge you to inform the Secretaries of State of Kansas and Arizona that their
requests cannot and will not be granted because they are inconsistent with the
longstanding EAC policy, EAC regulations, and the National Voter Registration Act of
1993 (the “NVRA”). 42 U.S.C. § 1973gg. The EAC has previously considered and
made binding decisions on the precise regulatory, statutory, factual, and
constitutional issues, and the EAC staff is bound by those precedents here. And
Kansas and Arizona have offered no compelling reasons for revisiting those decisions,
even assuming EAC were permitted to do so (which it is not).

As the Notice and Request for Public Comment indicates, the Commission’s
“discretion [in this matter] is constrained by several statutory requirements” and its own
regulations. The Executive Director in particular is obligated to “maintain[] the Federal Form consistent with the [NVRA] and EAC Regulations and policies” and may not unilaterally alter those regulations and policies. This letter addresses the constraints that govern the Executive Director in this instance, namely: (1) the EAC’s policies and past practices; (2) the NVRA and the EAC’s regulations; and (3) statutory requirements and Commission policies expressly limiting the Executive Director’s authority. In doing so, this letter also addresses (4) constitutional and factual considerations related to this request.

- First, the states’ requests are inconsistent with binding EAC precedent. The Commission expressly rejected Arizona’s initial request in 2006 based on its interpretations of the NVRA and its own regulations and subsequently rejected Arizona’s request to reconsider that decision. Those interpretations, and their applications to these requests, are binding and therefore continue to control here. In short, the questions raised by these state requests have been asked and answered by the Commission.

- Second, the states’ requests are inconsistent with the NVRA and EAC regulations. The NVRA’s language, history, and purposes make clear that the statute prohibits states from requiring documentary proof of citizenship from applicants seeking to register to vote by mail using the Federal Form. The regulations developed by the EAC through notice-and-comment rulemaking also compel rejection of the states’ requests.

- Third, the Executive Director lacks the unilateral authority to grant the states’ requests. EAC staff has no authority to make material changes to the Federal Form, which was developed through rulemaking with the approval of three or more EAC commissioners pursuant to the NVRA and the Help America Vote Act of 2002, 42 U.S.C. § 15328 (“HAVA”). Simply put, even assuming EAC Staff was inclined to grant the states’ requests, the EAC would be required to conduct a notice and comment rulemaking with the support of at least three Commissioners in accordance with the Administrative Procedure Act, the NVRA and HAVA.

- Fourth, constitutional and factual considerations require rejection of the states’ requests. The Elections Clause of the U.S. Constitution authorizes the creation of the Federal Form as promulgated by the EAC. Arizona and Kansas cannot show, as they must, that documentary proof of citizenship at registration with the Federal Form is necessary to effectuate their voter eligibility requirements. Nor can the states show that the form precludes them from obtaining the information necessary to enforce their voting qualifications. Further, the states’ untested assertions regarding registration and voting by ineligible persons do not stand up to scrutiny and do not support the changes they seek to the form. And finally, in practice, documentary proof of citizenship requirements for federal voter registration already have had harmful consequences on voters and voter service organizations in both Arizona and Kansas, undermining critical goals of the NVRA and the U.S. Constitution.
I. The States’ Requests are Inconsistent with Binding EAC Precedent

The EAC has previously considered and made binding decisions on the regulatory, statutory, factual and constitutional issues in this case and the EAC staff is bound to follow those precedents. ¹

A. Precedent Concerning Documentary Proof of Citizenship

Arizona and Kansas’s requests cannot and should not be approved because they are contrary to binding EAC precedent. This precedent predates even Arizona’s initial request. As Commissioner Ray Martinez III explained in 2006, the EAC has “established its own interpretive precedent regarding the use and acceptance of the Federal Form [and] upheld established precedent from [the Federal Election Commission (FEC)],” the EAC’s predecessor in administering the Federal Form. Position Statement, Commissioner Ray Martinez III, July 10, 2006, at 5 (Attachment A). The EAC has consistently interpreted the NVRA and its own regulations to preclude documentary proof of citizenship. See, e.g., Nat’l Clearinghouse on Election Admin., Fed. Election Comm’n, Implementing the National Voter Registration Act of 1993 at 3-2, 3-3, 3-4 (1994) (specifying the FEC’s assessment of data and attestations necessary for the federal form, including “signature with oath” but not documentary proof of citizenship); ² 11 C.F.R. § 9428.4(b)(1), (2) (providing that the federal form specify citizenship as an eligibility requirement and mandating that the form include an attestation that the applicant meet this and other requirements). Applying this precedent, the Commission squarely addressed this very issue in 2006.

In 2005, Arizona first requested that the EAC amend the Federal Form to reflect its newly enacted Proposition 200, which required local election officials to “reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship.” E-Mail from Office of Arizona Secretary of State to U.S. Election Assistance Commission, December 12, 2005; Ariz. Rev. Stat. Ann. § 16-166(F). We understand that, during a meeting in February 2006, the four EAC Commissioners discussed Arizona’s request, decided to reject it, and instructed then-Executive Director Thomas Wilkey to inform Arizona of the EAC’s decision. In March 2006, Wilkey, with the required approval of three or more EAC Commissioners, informed Arizona of the EAC’s reasoned conclusion that the state’s documentary proof of citizenship requirement may not be applied to registrants using the Federal Form. See March 6, 2006 Letter from U.S. Election Assistance Commission Thomas R. Wilkey to Arizona Secretary of State Jan Brewer (the “EAC’s March 6, 2006 Letter,” attached as Attachment B). The EAC’s

¹ The precise issues raised by the Kansas and Arizona requests have previously been asked and answered by the EAC. While there may be no limit on the number of times a particular Secretary of State can ask the EAC the same question, there is no reason to believe that the agency must follow elaborate procedures to reconsider each repeat request before informing the person making the repeat request that it cannot be granted.

² Available at http://www.eac.gov/assets/1/Page/Implementing%20the%20NVRA%20of%201993%20Requirements%20Issues%20Approaches%20and%20Examples%20Jan%201%201994.pdf.
March 6, 2006 Letter stated that the EAC had found that “[t]he Federal Form sets the proof required to demonstrate voter qualification. No state may condition acceptance of the Federal Form upon receipt of additional proof.” *Id.* at 3. It further noted that “Congress specifically considered whether states should retain authority to require that registrants provide proof of citizenship, but rejected the idea as ‘not necessary or consistent with the purpose of [the NVRA].’” *Id.* Accordingly, the EAC found that Proposition 200 was “preempted by Federal law” and that the state “may not mandate additional registration procedures that condition the acceptance of the Federal Form.” *Id.* The Commission’s rejection of Arizona’s 2005 request was based on its understanding of the information required using the Federal Form, consistent with its regulations, and the NVRA’s text. *See id.*

Notably, the EAC’s March 6, 2006 Letter makes clear that when the Commission rejected Arizona’s identical request in 2006, it considered the same constitutional issues raised by Arizona and Kansas here. Specifically, the letter said:

> [W]hile Article I, section 2 and the Seventeenth Amendment authorize States to set requirements regarding voter qualifications in a Federal election . . . , this does not limit the Federal authority to set voter registration procedures for such elections. . . . This is true even where States have declared voter registration to be a voting qualification . . . or where Federal registration requirements may indirectly make it more difficult for a State to enforce qualification requirements.

*Id.* at 2 (citations omitted). The EAC’s March 6, 2006 Letter specifically rejected Arizona’s assertion that its documentary proof of citizenship requirement is somehow necessary to enforce its citizenship voting qualification. It said that Arizona’s requirement

is merely an additional means to document or prove the existing voter eligibility requirement of citizenship. As such, Arizona’s statutory changes deal with the manner in which registration is conducted and are, therefore, preempted by Federal law. The NVRA, HAVA and the EAC have determined the manner in which voter eligibility shall be documented and communicated on the Federal form. State voter requirements are documented by the applicant via a signed attestation and, in the case of citizenship, a “checkbox.”

*Id.* at 4. In other words, the EAC previously contemplated and rejected the constitutional arguments Arizona and Kansas raise here, and in doing so, expressly considered the relationship between the Elections and the Qualifications Clauses.

The EAC’s March 6, 2006 Letter to Arizona is binding precedent that constrains EAC staff. On its face, the letter makes clear that it reflects the decision of the EAC, acting pursuant to its procedures (“the EAC concludes that [Arizona’s] policies would effectively” violate the NVRA). *Id.* at 1. There is no basis to suggest otherwise. Pursuant to HAVA, the EAC may only take action “with the approval of at least three of
its members.” 42 U.S.C. § 15328. The EAC’s March 6, 2006 Letter, which constitutes formal agency action, thus was authorized by at least three Commissioners.

Subsequent EAC action and policy make clear that the denial of Arizona’s request reflected in the EAC’s March 6, 2006 Letter was made with the approval of a majority of Commissioners. After Arizona sought reconsideration of the EAC’s March 2006 decision, the four EAC Commissioners denied the request by a 2-2 vote. Election Assistance Comm’n, Public Meeting (Mar. 20, 2008), available at http://www.eac.gov/assets/1/Events/minutes%20public%20meeting%20march%202006%202008.pdf. This vote reflected the EAC’s belief and practice that any modifications to the Federal Form require assent of three Commissioners. It was also a second agency decision on Arizona’s request to modify the Federal Form, and again the EAC rejected the request. In a statement issued in conjunction with this vote, then-Commissioner Ray Martinez wrote that the “EAC commissioners [had previously] chosen a consensus-driven” approach to its activities, and that a prior form modification request from the state of Florida was rejected through a letter from the EAC General Counsel “with the unanimous consent of the EAC commissioners.” Martinez Position Statement 4, 7. At the time that the EAC rejected Arizona’s initial request, the Commissioners acted through consensus, including on matters that reference no formal vote, like the above-mentioned Florida request.3


B. Other Precedents

EAC precedent on another matter also constrains the staff today and properly guided the Commission in 2006. In 2005, Florida sought to modify the Federal Form to require applicants to answer questions about their mental capacity and felony status in order to assess eligibility. In response, the EAC advised Florida that it could not make the requested modifications because, the “NVRA mandates that the Federal Form, without supplementation, be accepted and used by states to add an individual to its registration rolls.” Martinez Position Statement 5, citing Letter from Gavin Gilmour, EAC Associate General Counsel, to Dawn Roberts, Director of the Florida Division of Elections, July 26, 2005 (“EAC’s July 26, 2005 Letter,” (attached as Attachment C). The

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3 In 2010, for the first time, the EAC issued a policy concerning the role and responsibilities of the Executive Director. At no time previously did the EAC delegate any general authority to the Executive Director. See discussion infra Part III (explaining how EAC policy makes clear that the Executive Director could not have acted on his own).
EAC’s July 26, 2005 Letter went on to clarify the Commission’s position that “states may not create policies or pass laws” that alter the Federal Form’s requirements in any way. *Id.* at *7A. As Commissioner Martinez noted in 2006, “in refusing Florida’s request . . . 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 [its] predecessor agency.” *Martinez Position Statement 5.*

Moreover, in their pleadings in the *Kobach v. EAC* litigation, Arizona and Kansas erroneously suggest that a 2012 decision by EAC staff to approve a modification to the Federal Form requested by Louisiana somehow renders the Commission’s denial of their requests arbitrary and capricious. *Plaintiffs’ Memorandum in Support of Motion for Preliminary Injunction (hereinafter “Pls.’ Br.”) at 17-18, Kobach v. EAC, No. 5:13-cv-04095 (D. Kan. Oct. 23, 2013).* They are wrong because Louisiana’s request is distinguishable from the requests by Arizona and Kansas and, in any event, the request should have been rejected as inconsistent with the EAC’s precedent and beyond the agency staff’s authority to grant.

First, Louisiana’s request is plainly distinguishable because it does *not require* applicants to produce documentary proof of citizenship at registration. Instead, the Louisiana-specific instructions require that applicants without a valid driver’s license or social security number “attach one of the following items to his application: (a) a copy of a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of applicant”—documents that do not establish an applicant’s citizenship and which federal law already requires first-time voters who register by mail to provide either with their applications or when they appear to vote. *See National Voter Registration Application at 9.*

Second, to the extent that Kansas’s and Arizona’s requests are somehow deemed “similar” to Louisiana’s, the League respectfully submits that the EAC should have rejected Louisiana’s request as inconsistent with the EAC’s precedent. As established in the Commission’s response to Florida’s 2005 request, made with the consensus of the Commissioners, states must “accept and use” the Federal Form “without supplementation.” *EAC’s July 26, 2005 Letter at *6A. “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.” *Id.* Just as the EAC rejected Florida and Arizona’s requests for requiring information beyond that of the Federal Form itself, so should it have rejected Louisiana’s request on the very same ground. Additionally, as the EAC’s staff made that decision at a time when the EAC was operating without a quorum of Commissioners in 2012, the Commission exceeded its authority in permitting Louisiana’s changes. *See infra Part III* (discussion of EAC staff powers). In any event, the EAC’s treatment of the Louisiana instructions does not render arbitrary or capricious the Commission’s otherwise consistent decisions rejecting documentary proof of citizenship requirements.
II. The States’ Requests Are Inconsistent with the National Voter Registration Act and EAC Regulations

Even setting aside the binding nature of EAC’s own precedents, Arizona’s and Kansas’s requests are inconsistent with the governing statute and the EAC’s implementing regulations. The plain terms of the NVRA prohibit states from requiring documentary proof of citizenship from applicants using the Federal Form. The legislative history surrounding the NVRA confirms that Congress expressly declined to allow documentary proof of citizenship. And the EAC, which was specifically authorized by Congress to implement the NVRA and maintain the Federal Form, has issued regulations prohibiting states from requiring documentary proof of citizenship, which are themselves entitled to deference.

A. Language of the NVRA

Under the NVRA, states must “accept and use” the Federal Form developed by the EAC. As the Supreme Court explained in Arizona v. Inter-Tribal Council of Arizona, Inc. (hereinafter “ITCA”), states must accept and use the Federal Form, including whatever identifying information the EAC prescribes, and they may not require additional information. 133 S. Ct. 2247, 2257-59 (2013). The Court recognized that “the fairest reading of the statute 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 (quoting Ex parte Siebold, 100 U.S. 371, 397 (1879)). States thus could only require documentary proof of citizenship if the Federal Form were modified to permit them to do so, but as described below, the plain terms of the NVRA prohibit such a change.

The NVRA prescribes the content of the Federal Form, setting forth several limitations and requirements that guide the EAC. First, the form “may require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. § 1973gg-7(b)(1) (emphasis added). Second, the form must specify that U.S. citizenship is an eligibility requirement for voting. Id. § 1973gg-7(b)(2)(A); see 11 C.F.R. § 9428.4(b)(1). Third, the form must contain an attestation that the applicant meets all eligibility requirements, including U.S. citizenship. 42 U.S.C. § 1973gg-7(b)(2)(B). Fourth, it must require that the applicant sign under penalty of perjury. Id. § 1973gg-7(b)(2)(C). Fifth, the form must list the “penalties provided by law for submission of a false voter registration application.” Id. §§ 1973gg-6(a)(5)(B), 1973gg-7(b)(4)(i). Sixth, the form “may not include any requirement for notarization or other formal authentication.” Id. § 1973gg-7(b)(3).

As explained in part C below, the EAC has interpreted these provisions to set both a floor and a ceiling for what states may require from applicants in order to establish citizenship. That interpretation is plainly the best reading of the statute. The statute allows for documentary proof of citizenship only if it is necessary to assess an applicant’s citizenship. But the facts make clear that documentation is not necessary for that
purpose. See infra part IV.C. Moreover, by expressly providing for other means of verifying an applicant’s citizenship in both the NVRA and HAVA, Congress made clear its conclusion that documentary proof of citizenship is not necessary. That conclusion is bolstered by the legislative history. See infra part III.B. In short, the Arizona and Kansas requests are precluded by the language of the statute.

The Arizona and Kansas requests also run counter to the NVRA’s purpose. The NVRA’s express goals are to “increase the number of eligible citizens who register to vote in elections for Federal office” and to implement procedures to “enhance[] the participation of eligible citizens as voters in elections for Federal office.” 42 U.S.C. § 1973gg(b)(1), (2). The centerpiece of this effort was the creation of a standardized mail-in registration form that could be used by citizens of any state to register for federal elections—the Federal Form. Id. § 1973gg-4. By providing for the creation of a standard form that all states were required to “accept and use,” Congress sought to ensure that states could not disenfranchise voters by setting discriminatory or burdensome registration requirements. See ITCA, 133 S. Ct. at 2255 (“[T]he Federal Form guarantees that a simple means of registering to vote in federal elections will be available”); Ass’n of Cmty. Orgs. for Reform Now (ACORN) v. Miller, 129 F.3d 833, 835 (6th Cir. 1997) (hereinafter “ACORN”) (“In an attempt to reinforce the right of qualified citizens to vote by reducing the restrictive nature of voter registration requirements, Congress passed the [NVRA].”); see also Craig C. Donsanto & Nancy L. Simmons, U.S. Dep’t of Justice, Federal Prosecution of Election Offenses 63 (7th ed. 2007), available at http://www.justice.gov/criminal/pin/docs/electbook-0507.pdf (“The major purpose of this legislation was to promote the exercise of the franchise by replacing diverse state voter registration requirements with uniform and more convenient registration options, such as registration by mail.”).

The Federal Form was also meant to benefit national organizations, like the League, that register voters in multiple jurisdictions, so that they would no longer have to contend with varying and confusing state registration laws. See 42 U.S.C. § 1973gg-4(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”), see also Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1353 (11th Cir. 2005) (noting that the NVRA “impliedly encourages” voter registration programs, and by “limit[ing] the states’ ability to reject forms meeting its standards . . . it does protect [voter registration drives]”).

The Arizona and Kansas requests undermine Congress’s goals in enacting the NVRA and providing for the Federal Form—namely, the goals of providing for a simple voter registration form, promoting national uniformity in the voter registration process, increasing voter registration and participation, and facilitating large-scale voter registration drives.

The hypothetical constitutional question posed by Arizona and Kansas does not require the EAC to reinterpret the NVRA. The states assert that they need documentary
proof of citizenship to enforce their voter qualifications and the EAC is thereby constitutionally obligated to reinterpret the NVRA to allow them to do so. But as the Supreme Court made clear in ITCA, any such constitutional question would arise only “if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.” 133 S. Ct. at 2258-59 (emphasis added). Here, however, the states have not and cannot demonstrate that rejecting inclusion of a documentary proof of citizenship requirement in the Federal Form actually would preclude them from obtaining information necessary to enforce their voter qualifications. See infra part IV.A. Thus, it would be inappropriate for the EAC to abandon the best interpretation of the NVRA.

B. Legislative History

The legislative history of the NVRA confirms that Congress considered whether the Federal Form should permit documentary proof of citizenship and rejected such a requirement. During congressional deliberations on the NVRA, the Senate passed an amendment to the bill providing that “[n]othing in this Act shall be construed to preclude a State from requiring presentation of documentary evidence of the citizenship of an applicant for voter registration.” 139 Cong. Rec. 5098 (1993). The House version of the bill, however, did not include this amendment, and in reconciling the two versions, the Conference Committee explained why: “[The amendment] is not necessary or consistent with the purposes of this Act. Furthermore, there is concern that it could be interpreted by states to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act.” H.R. Rep. No. 103-66, at 224 (1993). The final version of the NVRA did not include any provision permitting states to require documentary proof of citizenship.

Congress’s intent was further amplified when HAVA was passed in 2002. HAVA presented Congress with an opportunity to modify the Federal Form to require more information from applicants. Instead, Congress added one mandatory question asking the applicant to check a box affirming that she is a United States citizen. See 42 U.S.C. § 15483(b)(4)(A)(i). HAVA also provided states with tools to confirm applicants’ eligibility by requiring an identification number (such as a driver’s license number, a non-operating identification license, or the last four digits of their social security number), and requiring states to verify those numbers against other government databases. See id. at § 15483(a)(5)(B)(i). HAVA did not, however, allow states to require documentary proof of citizenship.4

In sum, both the NVRA and HAVA’s “text, context, purpose, and . . . drafting history all point in the same direction . . . .” United States v. Hayes, 555 U.S. 415, 429 (2009). Congress plainly did not allow states to require documentary proof of citizenship in connection with the Federal Form.

C. EAC Regulations

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4 Notably, as explained in part IV.B, infra, these requirements long have allowed states, including Kansas and Arizona, to verify the eligibility status of applicants who sought to register to vote using the Federal Form.
The NVRA vests the EAC (and previously, the FEC) with the sole authority to develop the Federal Form in consultation with the various States. 42 U.S.C. § 1973gg-7(a)(2). The NVRA requires a notice-and-comment rulemaking in order to create the form. Following the statute’s enactment, the FEC conducted a rulemaking, received extensive comments, and then adopted a Federal Form that required registrants, among other things, to attest to their U.S. citizenship. See Nat’l Voter Registration Act of 1993, 59 Fed. Reg. 32,311 (June 23, 1994). The Federal Form developed through the rulemaking consists of a single sheet of cardstock that the applicant can simply fill out, sign under penalty of perjury, stamp, and mail as a postcard to the appropriate state election official. See 11 C.F.R. § 9428.5. The FEC used the rulemaking process to specify the bounds of “necessary” identifying information. In designing the Federal Form, it specifically determined that the information it required on the Federal Form were “all elements necessary for jurisdictions to determine voter qualifications and to administer voter registration and other parts of the election process.” 59 Fed. Reg. 32,311. Thus, by not including documentary proof of citizenship in the Federal Form, the FEC made clear its conclusion that documentary proof of citizenship was not “necessary” to determine voter qualifications. To the contrary, it 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.” Id. at 32,316. Through its regulations at 11 C.F.R. § 9428.4(b), the EAC determined that an applicant’s attestation of eligibility (including U.S. citizenship), affirmative answer to the question “Are you a citizen of the United States of America?,” and signature under penalty of perjury is the “only [information] . . . necessary” for state officials to determine an applicant’s citizenship. 42 U.S.C. § 1973gg-7(b)(1); id. § 15483(b)(4)(A)(i).

These same provisions relating to the “necessary” information were retained in subsequent rulemakings for which, like the original rulemaking, the states were asked their views. The EAC’s rules and regulations adopting the specifications for the Federal Form after a formal notice-and-comment rulemaking, are entitled to judicial deference as they reflect a reasonable—if not the only—reading of the NVRA. See generally Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984). Indeed, the Circuit Court of Appeals and the Supreme Court in ITCA determined that this was the best reading of the NVRA. ITCA, 133 S. Ct. at 2257; Gonzalez v. Ariz., 677 F.3d 383, 398 (9th Cir. 2012) (en banc). Deference is afforded “because of a presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.” Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 740-41 (1996).

III. The EAC Executive Director Is Expressly Prohibited from Unilaterally Altering the Status Quo Under Both Law and EAC Policy

Even if EAC staff wished to approve the states’ requests (and the states have failed to present any reason to do so), the Executive Director and EAC staff lack the requisite authority to do so. As the EAC acknowledged in the Notice and Request for
Public Comment, statutes and regulations constrain the Executive Director on matters involving the Federal Form. See Notice and Request for Public Comment at 3.

A. The EAC Staff Have No Authority to Overturn a Standing Agency Decision

As described above, the EAC acted multiple times on Arizona’s initial request. First, it denied the request through the EAC’s March 6, 2006 Letter. Then, the Commission reconsidered the request and publicly voted 2-2 against granting Arizona the Federal Form modification it sought. Adopting the identical requests from Arizona and Kansas now would defy a Commission decision that only the Commissioners themselves can address through appropriate procedures. As noted above, HAVA, the statute that created the EAC, expressly requires that any official EAC action must be approved by at least three Commissioners. See 42 U.S.C. § 15328. HAVA has no language delegating the power to take action to modify the Federal Form to Commission staff, let alone in the absence of a Commission quorum, nor have the Commissioners purported to delegate such authority to staff. The Commission’s staff therefore may not act on its own to modify the Federal Form. What is more, even with the approval of three Commissioners, the EAC may still only implement new modifications to the Federal Form through a notice-and-comment rulemaking, as provided by the NVRA. 42 U.S.C. §1973gg-7(a)(1) (EAC must prescribe regulations to develop the Federal Form). As the Commission has previously acknowledged, the Administrative Procedure Act governs proposed changes to EAC regulations and the Federal Form. See 59 Fed. Reg. 32,323, and 74 Fed. Reg. 37,520.5

B. EAC Policy Expressly Prohibits Staff Granting the States’ Requests Here

The Commission recognizes that the staff must “maintain[] the Federal Form consistent with … EAC Regulations and policies.” Notice and Request for Public Comment at 3. Such policy as to agency procedures reinforces the EAC staff’s inability to act to change the status quo. The Commission’s September 15, 2008 policy on “The Roles and Responsibilities of the Commissioners and Executive Director of the U.S. Election Assistance Commission” clearly states that the Executive Director has responsibility to “maintain the Federal Voter Registration Form consistent with the NVRA and EAC regulations and policies.” Roles Policy 7. As discussed in the preceding sections, the states’ requests are wholly inconsistent with NVRA’s provisions, its purpose as reflected in its legislative history, and the determinations of its application as made through notice and comment rulemaking by the EAC and FEC.

The “Roles and Responsibilities” policy further states that “adoption of NVRA regulations” and “policies of general applicability that impact parties outside of the EAC”

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5 Not all changes to the state-specific instructions on the Federal Form require a new notice-and-comment rulemaking. The EAC’s regulations concerning the Federal Form specifically provide for a list of pieces of information that will be included in those instructions pursuant to information provided by chief state election officials. See 11 C.F.R. 9428.6 (listing information state officials must provide the EAC for the Federal Form instructions and requiring officials to notify the agency of any changes to that information).
are the responsibility of the Commissioners and "must be accomplished by an affirmative vote of three or more commissioners." Roles Policy 2. These matters require the Executive Director to follow specified procedures. See id. at 3. The three-commissioner requirement is mandated by HAVA, 42 U.S.C. § 15328.

Although the policy includes a statement that the Executive Director may "implement and interpret policy directives, regulations, guidance, guidelines, manuals and other policies of general applicability issued by the commissioners," this is within the context of "provid[ing] for the overall direction and administration of EAC’s operating units and programs, consistent with the agency’s strategic plan and any applicable commissioner adopted policies." Roles Policy 6 (emphasis added.) It is not a blanket grant of authority, and it should go without saying that the Executive Director cannot have authority that the Commission itself currently lacks in the absence of a Commission quorum. And it certainly is not a grant of authority to change any policies previously issued by Commissioners.

This lack of authority is further confirmed by the EAC’s current operating procedure. As mentioned above, Executive Director Wilkey established in 2011 that, without a quorum of commissioners, EAC staff will defer and thus not approve "[r]equests that raise issues of broad policy concern to more than one State." Wilkey Memo at 2. The instant issue (a request by more than one state) before the Commission is precisely that.

IV. Constitutional and Factual Considerations Also Require EAC Staff to Deny Kansas’s and Arizona’s Requests

To the extent that the Executive Director and EAC staff wish to recommend that the Commission grant this request when the EAC has its necessary quorum of Commissioners (and there is no basis for doing so), constitutional and factual considerations require the EAC staff to recommend that the EAC deny Arizona’s and Kansas’s requests. As a constitutional matter, the states do not have the power to require those applying to vote in federal elections to provide documentary proof of their citizenship with the Federal Form. The Federal Form and its current contents are creatures of federal power under the Elections Clause, and under the Clause, any inconsistent state law must give way. The relevant factual considerations are twofold: first, the states cannot show, as they must, that documentary proof of citizenship is necessary for the states to effectuate their voter qualifications; and second, the implementation of documentary proof of citizenship requirements has had harmful consequences to voters and voter registration efforts, such as those by the League, in both Arizona and Kansas.

A. The States’ Requests Must Be Denied Because They Conflict with Federal Authority Under the Elections Clause to Regulate Federal Elections
The EAC’s previous denial of Arizona’s request to require documentary proof of citizenship was correct under the U.S. Constitution. Under the Elections Clause, Congress possesses broad power to regulate the manner of conducting federal elections.

For over a century, the Supreme Court has recognized that the Elections Clause grants Congress “a general supervisory power over the whole subject” of federal elections. *Ex parte Siebold*, 100 U.S. at 387. Under the Clause, Congress wields “broad” authority to craft “a complete code for congressional elections,” including “registration.” *ITCA*, 133 S. Ct. at 2254 (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)) (emphasis added); see *ACORN v. Edgar*, 56 F.3d 791, 793 (7th Cir. 1995) (“[T]he ‘Manner’ of holding elections has been held to embrace the system for registering voters.”). Congress has such plenary power, including over voting registration, because the Elections Clause “is a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to preempt state legislative choices.” *ITCA*, 133 S. Ct at 2253 (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)) (citation omitted).

Article I, Section 4 of the Constitution provides that “the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” While states shall “prescribe[] the ‘Times, Places and Manner of holding Elections for Senators and Representatives.” *Id.* In other words, as the U.S. Supreme Court explained, because this provision empowers Congress to “make or alter” state election regulations, “[w]hen Congress legislates with respect to the ‘Times, Places and Manner’ of holding congressional elections, it necessarily displaces some element of a pre-existing legal regime erected by the States.” 133 S. Ct at 2256-57 (quoting U.S. Const. Art. I, § 4, cl. 1). Thus, “[u]nlike the States’ ‘historic police powers, . . . [t]he States’ role in regulating congressional elections—while weighty and worthy of respect—has always existed subject to the express qualification that it ‘terminates according to federal law.’ *Id.* at 2257 (citation omitted). The Supreme Court has consistently recognized that federal power over the “Manner” of federal elections is “paramount” and trumps state authority on the subject. *See id.* at 2253-54 (citation omitted). In the event of a conflict between federal and state voting regulations—including voter registration requirements—“the [federal] regulations effectuated supersede those of the State which are inconsistent therewith.” *Id.* (quoting *Siebold*, 100 U.S. at 392).

While states may have the power to establish voter qualifications, states may not enforce that power in a way that usurps the paramount federal authority to regulate the manner of federal elections when Congress has already spoken clearly on the matter, as it has here. A state’s election authority cannot infringe upon Congress’s power to establish registration procedures for federal elections. *See ITCA*, 133 S. Ct. at 2254; *Smiley*, 285 U.S. at 366; *Siebold*, 100 U.S. at 392. As the Supreme Court explained in *ITCA*, “the Elections Clause empowers Congress to regulate how federal elections are held,” but the states determine “who may vote in them.” 133 S. Ct. at 2257-58. Arizona and Kansas’s

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6 Whether states have the power under the Constitution to determine federal voter qualifications is an open issue that is not presented squarely here, as this case concerns federal elections regulations.
documentary proof of citizenship requirement at registration addresses a "how" issue, not a "who" issue. The states may not undermine Congress's clear authority to regulate voter registration by seeking to redefine voter registration requirements as a "who" issue.

Kansas and Arizona misconstrue their retention of power to decide who may vote in federal elections as blanket authority to determine how federal elections are run, as long as they can articulate some connection between an election procedure and voter qualifications. In ITCA, the Supreme Court made the straightforward observation that Congressional regulation could not leave states entirely "without the power to enforce those requirements." 133 S. Ct. at 2258. The Court said that "it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications." Id. (emphasis added). The statutes at issue here, however, do not preclude a state from obtaining such information, and the Federal Form does not interfere with states' longstanding procedures to enforce their citizenship qualifications. Indeed, the Federal Form requires applicants to attest to their citizenship under penalty of perjury and to reaffirm this attestation by separately checking an additional box on the form. If states are permitted to impose any registration requirements they desire onto the Federal Form in the name of enforcing their voter qualifications, Congress' power to regulate the manner of voter registration in federal elections would be rendered a near nullity.

The spheres of federal and state authority over federal elections are closely linked to constitutional first principles. As the Supreme Court has stated: "While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, this statement is true only in the sense that the states are authorized by the Constitution to legislate on the subject . . . to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under [the Elections Clause and Necessary & Proper Clause]. . . ." United States v. Classic, 313 U.S. 299, 315 (1941) (citations omitted) (emphasis added). Without such restriction, states would necessarily engage in "the mechanics of congressional elections," ITCA, 133 S. Ct at 2253, including registration. The states have this power only to the extent that Congress has not claimed it—as Congress did when it passed the NVRA and HAVA. Reading the Qualifications Clauses and the Seventeenth Amendment more broadly would allow the exception—the states' power to set voter qualifications—to swallow the rule—Congress's power over every other aspect of federal elections.

In any event, in suggesting that they need only assert that documentary proof of citizenship is necessary, Kansas and Arizona fail to recognize the federal government's authority to enforce eligibility requirements. Enforcement is not solely a state prerogative and any consideration of constitutional power must include consideration of the dual nature of the responsibility and the preemptive authority of the federal government in this sphere. See, e.g., HAVA, 42 U.S.C. § 15483(a)(5)(B)(i) (establishing procedures to allow those states that require such information to confirm applicants' eligibility to vote by providing an identification number and requiring states to verify those numbers against other government databases); NVRA, 42 U.S.C. § 1973gg-7(a), (b) (vesting the FEC (and now the EAC) with the sole authority to develop the
application form in consultation with the various States and prescribing requirements and limitations for the Federal Form’s content. Because Congress has clearly determined that the Federal Form may not include documentary proof of citizenship requirements, “the [federal] regulations effected supersede those of the State which are inconsistent therewith.” *ITCA*, 133 S. Ct. at 2254 (quoting *Siebold*, 100 U.S. at 392).

**B. The States Cannot Show that Documentary Proof of Citizenship Is Necessary To Effectuate their Voter Qualifications**

The NVRA, as interpreted by the U.S. Supreme Court, requires that Kansas and Arizona “establish” that their documentary proof of citizenship requirements are, in the language of the NVRA, “necessary to enable the appropriate State election official to assess the eligibility of the applicant.” *ITCA*, 133 S. Ct. at 2259 (citing 42 U.S.C. §1973gg-7(b)(1)). Given the numerous methods that states—including Kansas and Arizona—utilize and have at their disposal to enforce their voter qualification requirements, the states cannot show that documentary proof of citizenship is “necessary.”

Arizona’s and Kansas’s own voting histories undermine any claim of necessity under the NVRA. For over a hundred years, Kansas and Arizona have held U.S. citizenship as a requirement for voting, see Ariz. Rev. Stat. Ann. Const., Art. 7 § 2.A; Kan. Stat. Ann. Const. Art. 5 § 1, and have assessed applicants’ eligibility without requiring documentary proof of citizenship at the point of registration, registering those are qualified and denying registration for those who are not (for whatever reason). For example, Kansas held its first legislative election in 1855 and has required U.S. citizenship as a qualification since 1859. *Ngiraingas v. Sanchez*, 495 U.S. 182, 196 (1990); Wyandot Constitution of July 29, 1859, Nat. Archives of the United States, http://research.archives.gov/description/6721634. The state has assessed voter eligibility and conducted both federal and state elections without requiring documentary proof of citizenship for over 150 years and evidently without any significant issue of non-citizen voting. Further, for over 20 years, since the enactment of the NVRA and the creation of the Federal Form with its citizenship attestation requirements, Kansas, Arizona, and the 42 other states that are subject to the NVRA have been registering voters using the Federal Form and assessing voter eligibility without the additional proof Kansas and Arizona now demand. 42 U.S.C. § 1973gg-2. In light of those facts, it would be extraordinary to find that documentary proof of citizenship is now necessary in two states to enforcement a citizenship requirement that has long existed nationwide.

Moreover, the declarations that Kansas and Arizona have submitted to the federal district court in *Kobach v. EAC* as evidence purporting to show non-citizen registration and voting, suffer from several major infirmities and thus should be accorded scant weight. *First*, the declarations are untested as the court in *Kobach* has not yet provided the defendants in the case, including the League, the opportunity or the forum to subject them to the rigors of cross-examination or other challenge. As noted to the court, the League strenuously objects to the factual and legal assertions made in the states’ declarations.
Second, the declarations claiming to show a handful of examples of non-citizen voting do not all allege any connection with the Federal Form. The declarants all do not even claim, never mind prove, that the handful of alleged non-citizen registrants or non-citizen voters had indeed registered to vote using the Federal Form at issue here. Thus, most of the declarations thus appear to be inapposite.

Third, the declarations do nothing to undermine Congress’s and the EAC’s determination that an attestation under oath, along with the other tools available to election officials, suffices to deter non-citizen registration and voting. Specifically, one declaration purports to show that, in 2009, only 13 non-citizens registered to vote in Kansas—without any mention of whether they used the Federal Form. See Bryant Decl., PIs. Br., Ex. A (ECF No. 19), ¶ 3. In August 2009, there were 1,700,330 individuals registered to vote in Kansas. Thus, only 0.00076 percent—less than one-thousandth of one percent—of all registrants were allegedly non-citizens, even assuming they registered using the Federal Form. Furthermore, Kansas points to no more than four non-citizens who may have actually voted prior to 2009—an infinitesimal number. See id., ¶¶ 3-4. A second declaration asserts that a permanent resident of the United States attempted to register to vote in Kansas using the Federal Form. See Ulrich Decl., ¶ 7. There is no indication that Kansas would have been unable to determine that the individual was ineligible to vote without its documentation requirement. Finally, a third declaration alleges that 37 people applying for U.S. citizenship in 2006 had either voted or registered to vote in Maricopa County. See Osborne Decl., PIs.’ Br. Ex. D (ECF No. 25), ¶ 8. In 2006, there were 1,484,434 registered voters in Maricopa County. Thus, only 0.00249 percent—about two-thousandths of one percent—of total registrants in 2006 are alleged to have been non-citizens. The tiny fraction of a percent of non-citizens who have purportedly registered in Kansas and Arizona indicates that, consistent with Congress’s findings, an attestation under oath suffices to establish eligibility for federal elections. See Gonzalez v. Arizona, No. 08-17094, Docket Entry No. 232 at 8 (9th Cir. June 7, 2012) (en banc) (denying Arizona’s application for a stay of the appeals court ruling, and holding that “Arizona has not provided persuasive evidence that voter fraud in registration procedures is a significant problem in Arizona; moreover, the NVRA includes safeguards addressing voter fraud”).

Fourth, putting aside whether they actually show (albeit infinitesimal) instances of voter fraud perpetrated by registration using the Federal Form, the states’ declarations do demonstrate that the states are decidedly not precluded from enforcing their voter eligibility requirements. The Supreme Court explained that constitutional questions only arise “if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.” ITCA, 133 S. Ct. at 2258-59 (emphasis added). Here, both Kansas and Arizona have available to them, and indeed use, a number of other means of verifying citizenship status. See generally Declaration of Lloyd Leonard, Jan.

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3, 2014, ¶¶ 21-32 (attached hereto as Attachment E). For instance, elections officials in both states have sought access to the Systematic Alien Verification for Entitlements program ("SAVE") to determine whether any non-citizens were registered on their voter rolls. In Arizona, Maricopa, La Paz, Pima, Yavapai, and Yuma counties have already entered into agreements with the Department of Homeland Security to access SAVE, and have used it to verify the eligibility of individuals registering to vote.\(^9\) Similarly, Kansas’s Secretary of State has expressed interest in using SAVE to verify voter registration, and also has requested access.\(^10\) Further, the states’ own declarations in the Kobuch case show that Kansas and Arizona have been able to identify potential non-citizens who have sought to register to vote without requiring documentary proof of citizenship. See, e.g., Osborne Decl., Pls.’ Br. Ex. D (ECF No. 25), ¶¶ 3, 10 (noting Maricopa County’s use of County Recorder and Jury Commissioner records to identify non-citizens); Bryant Decl., Pls. Br., Ex. A (ECF No. 19), ¶ 3 (noting Kansas Secretary of State’s use of driver’s license records to identify non-citizens). In short, Kansas and Arizona cannot carry their burden to show that the current Federal Form precludes them from obtaining information necessary to enforce their voter qualifications.

Finally, those declarations contain no new relevant facts beyond those previously considered by the EAC to justify reconsideration of the agency’s prior, correct decisions. While the states may have offered additional examples of the types of facts the EAC already considered in rejecting the previous requests, developing its regulations and policies, and implementing the NVRA, there is nothing materially new here. The states’ factual allegations boil down to this: there have been a small number of non-citizens who may have somehow registered to vote in recent years, and several of those individuals might have voted illegally. But it has long been well known in the elections community that some small number of ineligible people may register to vote. The EAC determined both in the Arizona case and in developing the regulations governing the Federal Form that this fact does not justify a proof of citizenship requirement. Congress was similarly well aware of this fact when the NVRA and HAVA were debated and adopted, and provided alternative mechanisms to address eligibility determinations.

In any event, the League reserves the right to respond to and object to any of the factual and legal assertions made by Kansas and Arizona.

C. The States’ Documentary Proof of Citizenship Requirements Have Had Harmful Consequences in their Implementation

A further reason the EAC should deny the states’ requests to amend the Federal Form is that documentary proof of citizenship requirements have had harmful consequences in both Arizona and Kansas. The League can speak directly to these consequences through its local organizations in both states. In both Arizona and Kansas, the requirements have complicated voter registration and alarmed the electorate. The

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requirements thus run directly counter to the NVRA’s purpose of making the ballot more accessible to all Americans.

The Arizona League was a plaintiff in the Inter Tribal Council litigation, the result of which the states are seeking to reverse through the Kobach litigation. The organization participated in the previous case because it was harmed during the period when Arizona implemented its documentary proof-of-citizenship requirement. It is participating in the Kobach litigation because it would be harmed again if the states prevailed. When Proposition 200 was previously implemented, the Arizona League was forced to drastically reduce its voter registration activities because of the administrative burden imposed by the law. Also, while the Arizona League continued to distribute voter registration forms, it was no longer able to confirm voter registrations, as it had done previously. The communities that the Arizona League serves were also adversely impacted. In Gonzalez v. Arizona, Case No. 2:06-cv-01268-PHX-ROS, slip op. (D. Ariz. Aug. 20, 2008), the case that eventually led to the Supreme Court’s decision in Inter Tribal Council, the district court found that after Arizona enacted the documentation requirement in 2004, over 30,000 people were initially unable to register to vote because of the requirement. Id. at 13. The court also found that a disproportionate number of those applicants were Latino. Id. Moreover, while approximately 11,000 of those applicants subsequently were able to register to vote, about 20% of the remaining 20,000 unsuccessful applicants were Latino. Id. at 14.

The Kansas League has also observed troubling issues in Kansas during the implementation of its proof of citizenship requirement. The registration activities of the organization’s nine local affiliates have been limited, hindered, or stopped entirely because the citizens that the League seeks to register and educate cannot produce documentary proof of citizenship or would have great difficulty doing so. Moreover, prospective League members who do not currently possess qualifying proof-of-citizenship documents could face difficulty registering to vote. In addition, partly in response to the new documentary proof-of-citizenship requirement, the Kansas League is initiating a campaign, “Protect the Vote,” to educate voters about Kansas voting requirements. League members have thus far contributed more than $6,000 toward this effort.

The state Leagues run voter registration drives that focus on communities with a history of lower participation in elections and people who are less likely to have proof of citizenship, such as minorities, women, students, younger voters, the poor, and the elderly. See Citizens without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification, Brennan Center for Justice (November 2006), at 2-3. The documentary proof-of-citizenship requirements make it significantly harder for the League and others to continue to register eligible voters because of the costs associated with buying, maintaining, and moving the equipment necessary to register voters who must show documentary proof of citizenship.

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11 Since this decision is not readily available electronically, it is included as Attachment D.
In addition to voter registration drives, the state Leagues and the national League engage in a number of nonpartisan activities geared to facilitate voting and other forms of civic participation, including in their efforts low-income neighborhoods, young people, rural areas, and minorities. Since the documentary proof-of-citizenship requirements were enacted by Arizona and Kansas, the Arizona and Kansas Leagues have encountered and received numerous inquiries from concerned citizens who lack the newly mandated proof-of-citizenship documents, do not have documentation with their current name, do not understand how they can acquire these documents, or are frustrated by the expensive and complicated procedures involved in obtaining such documents required under Arizona and Kansas law. In practice, the proof of citizenship requirement chills and in some cases prevents voting—precisely contrary to the NVRA’s mission of making voting more accessible to the general public.

V. Conclusion

The Supreme Court held in *ITCA v. Arizona* that:

42 U. S. C. §1973gg–4 precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself. Arizona may, however, 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.

133 S. Ct. at 2260.

The Executive Director and the EAC staff should inform the Secretaries of State of Kansas and Arizona that their requests cannot and will not be granted. As the EAC staff has acknowledged, it does not have discretion to alter with the Federal Form’s content in the manner the states request. Moreover, any action granting the requests would violate the NVRA substantively, HAVA procedurally, EAC regulations, and the commissions’ own policies. In addition, constitutional and the states’ proven ability to identify ineligible voters without requiring documentary proof further require denial of these requests.

The League asks that this letter and its attachments are included in any record related to the requests from the Secretaries of State of Kansas and Arizona and any EAC action or proceeding in relation to *Kobach v. EAC*.

Thank you for your attention to these important matters.

Respectfully submitted,

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League of Women Voters of Kansas in the matter of Kobach v. EAC, Case No. 13-cv-
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