DECLARATION OF KEN BENNETT

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

1. I was appointed as the Arizona Secretary of State in 2009 when former Secretary Jan Brewer succeeded to the governorship after then-Governor Janet Napolitano was confirmed as Director of Homeland Security. I was then elected to the position in 2010. Before becoming Secretary, I spent approximately twenty years in public service, including eight years in the Arizona Senate, the last four as Senate President.

2. As Secretary, I oversee all facets of the state’s elections and work with the counties to promote uniformity throughout the state in election practices.

3. I am competent to testify as to the matters contained herein and make this declaration based upon my own personal knowledge and experience.

4. As is evident from the rest of this declaration, having two voter registration systems is not optimal. My office is in the unenviable position of being stuck between a valid federal law and a valid state law which say different things. Casting a ballot represents the exercise of a fundamental right and should be open to all qualified individuals. My office’s mission, with respect to elections, is to never stop searching for ways to improve on helping people choose their leaders through fair, honest, and accurate elections.


6. In 1993, the United States Congress passed the National Voter Registration Act (“NVRA”), which was codified as 42 U.S.C. § 1973gx et seq. The NVRA required the Elections Assistance Commission (“EAC”) to develop a mail voter registration application form (the “Federal Form”) in consultation with the chief election officers of
the States. 42 U.S.C. § 1973gg-7(a)(2). The Federal Form does not require applicants to provide evidence of citizenship, but requires merely an attestation by the applicant that he or she is a citizen and the applicant’s signature under penalty of perjury. 42 U.S.C. § 1973gg-7(b)(2).

7. In 2004, Arizona voters passed Proposition 200, which was then codified as Arizona Revised Statutes ("A.R.S.") § 16-166(F). Under that provision, prospective voters must provide satisfactory evidence of United States citizenship in order to register to vote.

8. A.R.S. § 16-166(F) permits a variety of documents and identification numbers to be used as evidence of citizenship, including an individual’s driver license number or non-operating identification number. The proof-of-citizenship provisions enable Arizona’s election officials to assess the eligibility of voter registration applicants.

9. On December 12, 2005, the Secretary of State’s Office, under then-Secretary Jan Brewer, requested the EAC’s approval of State-specific instructions for the Federal Form that would incorporate Arizona’s proof-of-citizenship requirement. On March 6, 2006, Thomas Wilkey, then-Executive Director of the EAC, wrote to Secretary Brewer, stating that the NVRA preempted Arizona’s proof-of-citizenship requirement and refusing to include it in the Arizona-specific instructions. (See Doc. No. 1-10.)

10. Secretary Brewer then wrote to Paul DeGregorio, then-Chairman of the EAC, to request reconsideration of Mr. Wilkey’s decision. (See Doc. No. 1-11.)

11. Shortly after Proposition 200 was enacted, the Secretary’s Office sought approval from the Department of Defense ("DOD") to include Arizona’s proof-of-citizenship requirement in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) materials for the Federal Post Card Application (FPCA). The DOD approved inclusion of Arizona’s proof-of-citizenship requirement in the instructions. A copy of the Arizona-specific instructions for filling out the FPCA is attached hereto as
Attachment 1. This document is available online through the Federal Voting Assistance Program’s website at http://www.fvap.gov/resources/media/vagAZ.pdf.

12. In mid-2006, two groups of plaintiffs filed lawsuits against the State of Arizona and its fifteen counties, asserting that Arizona’s proof-of-citizenship requirement could not be applied to the federal voter registration form created by the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg et seq., as administered by the Election Assistance Commission (“EAC”). The two cases were consolidated as Gonzalez v. Arizona, D. Ariz. Cause No. CV06-1268-PHX-ROS.

13. In that case, the court denied the plaintiffs’ request for a temporary restraining order in an opinion and order dated June 19, 2006. The order stated that “Arizona’s proof of citizenship requirement does not conflict with the plain language of the NVRA.”

14. After that order was issued, Secretary Brewer sent another letter to the EAC renewing the request that EAC approve inclusion of Arizona’s proof-of-citizenship requirement in the State-specific instructions. (See Doc. No. 1-12.) Then-EAC Chair DeGregorio submitted a Tally Vote to the Commissioners, which failed on a 2 to 2 tie. (See Doc. No. 1-13.)

15. The Gonzalez case proceeded through the courts, going twice to the Ninth Circuit and the United States Supreme Court. On June 17, 2013, the U.S. Supreme Court issued its Opinion in Arizona v. Inter Tribal Council, — U.S. —, 133 S. Ct. 2247 (2013) (“Inter Tribal Council”), which is what the Gonzalez case ultimately became known as. The Court held that Arizona must accept and use the Federal Form to register voters for elections for federal office.

16. The Inter Tribal Council Opinion also provided that nothing precluded Arizona from renewing its request that the EAC include Arizona’s proof-of-citizenship requirement in the State-specific instructions and, if the EAC refused, challenging that rejection under the Administrative Procedures Act. Id. at 2259-60.
17. In light of the Inter Tribal Council Opinion, my staff and I conducted telephone conferences with the various county election officials multiple times to discuss what that decision meant with respect to state and local elections and whether voters who registered using the Federal Form without providing evidence of U.S. citizenship were eligible to vote in state and local elections.

18. In the meantime, on June 19, 2013, I wrote to Alice Miller, acting Executive Director of the EAC, to renew our request for approval of the Arizona-specific instructions. (See Doc. No. 1-14.)

19. On August 13, 2013, Ms. Miller responded to my letter, stating that the EAC staff could not process my request “due to a lack of a quorum on the Commission.” She attached a copy a memorandum authored by former EAC Executive Director Thomas Wilkey, which provided that “Requests that raise issues of broad policy concern to more than one State will be deferred until the re-establishment of a quorum.” (See Doc. No. 1-17.)

20. On August 20, 2013, I requested an official Opinion from Arizona Attorney General Tom Horne in accordance with A.R.S. § 41-193, on the following issue, among several others: are registrants who use the Federal Form without providing sufficient proof of citizenship eligible to vote in state and local issues? On October 7, 2013, the Attorney General issued Opinion No. 113-011, which answered my question in the negative. The Opinion stated that “Registrants who use the Federal Form and did not provide sufficient evidence of citizenship are not eligible to vote for state and local races.” Copies of the opinion request letter and the Opinion are attached hereto as Attachments 2 and 3.

21. Based on this Opinion, the State and counties must establish a dual registration system to keep track of voters who registered with evidence of citizenship and those who did not. The voters who provided evidence of citizenship will be able to vote in all elections, including races for federal, state, and local office, as well as ballot
measures. The voters who did not provide evidence of citizenship will be able to vote in elections for federal offices only.

22. From the time that the question was raised in light of the Inter Tribal Council opinion through the present, my staff and I have been brainstorming to determine all the necessary steps that would have to take place in order to implement a dual registration system.

23. I believe that we need to proceed carefully with respect to implementing a dual registration system. There are competing interests involved, including compliance with the federal and state constitutions and statutes, encouraging uniformity across the state, and mitigating voter confusion.

24. Among the first steps is that the county recorders will have to identify the impacted voters and notify them that they have registered using the Federal Form without providing evidence of citizenship, that they are currently only eligible to vote in elections for federal offices, and that they are not eligible to vote in state or local elections, or to sign nomination petitions and petitions for initiatives, referenda, and recall.

25. We will modify the Election Procedures Manual to implement the dual registration system. The Election Procedures Manual is a publication that the my office is required to produce in order to achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting and voting, and of producing, distributing, collecting, counting, tabulating and storing ballots throughout the State’s fifteen counties. A.R.S. § 16-452(A). The Election Procedures Manual has the force and effect of law and violators may be prosecuted and found guilty of a class 2 misdemeanor for each violation.

26. Making changes to the Election Procedures Manual is a long process that involves seeking input from stakeholders such as interested voters, the counties, cities, and towns, voter outreach groups and others about suggested changes. The changes are then drafted and stakeholder meetings are held to discuss the suggestions. My office then
finalizes the draft manual and submits it to the Governor and Attorney General for review. A.R.S. § 16-452(B).

27. At a minimum, there will be changes to the following chapters:
   Chapter 2 - Qualification and Registration of Electors
   Chapter 3 - Early Voting
   Chapter 7 - Nominating Procedures
   Chapter 10 - Conduct of Elections
   Chapter 11 - Central Counting Place

28. I estimate that the changes to the Election Procedures Manual can be completed by March, 2014, and that it will take an estimate of thousands of dollars and hundreds of man-hours to complete this task. This estimate is based on the data from the efforts to produce an updated 2013 Election Procedures Manual, which was completed shortly before the Inter Tribal Council decision was issued and awaited only the Governor's signature. I decided not to issue the 2013 Election Procedures Manual and instead to start the process over to take into account the dual registration system and other changes in Arizona election laws since the 2013 edition was completed.

29. My office administers a statewide database of voter registration information that contains the name and registration information of every registered voter in Arizona. This system will have to be enhanced in order to identify registrants who used a Federal Form, but did not provide proof of citizenship, and in some way indicate that those registrants are eligible to vote in federal races only.

30. The voter registration system will have to allow for special voter registration cards and special mailings for these voters who are eligible to vote in federal races only.

31. The voter registration system will also have to be enhanced in order to create the ability to run statistics for these federal-race-only voters by precinct for ballot ordering and to allow statistical tracking of these voters throughout the process.
32. The voter registration system must be enhanced so that ballot eligibility is clearly identifiable (1) on a signature roster; (2) to the early voting clerk and for early voting ballot preparation; (3) to the call center and customer service personnel; (4) on the county recorder websites for voter lookup tools; and (5) on voter registration lists so that candidates and challengers can identify eligibility for signing petitions.

33. The voter registration system must further be enhanced to enable a voter who is currently eligible to vote federal races only to submit evidence of citizenship and then demonstrate that voter’s eligibility to vote in all races.

34. With respect to elections themselves, there will have to be new federal-only ballot styles for each party for the primary election by precinct and new federal-only ballot styles for the general election by precinct. There will also have to be federal-only sample ballots. This will substantially increase the cost of each election.

35. The counties will have to be able to tabulate and report the federal-only ballots by precinct. My office will have to be able to receive that information and report it as well.

36. In addition to the practical changes, I, along with my staff, intend to work with the counties and other local jurisdictions in an education and outreach effort to the voters. Currently, we plan on holding a series of statewide meetings and producing advertisements and letters to individual voters.

37. Since the Attorney General’s Opinion was issued and released to the media, my office has received calls from angry and confused voters who are upset that the State is considering implementing a dual registration system. Many of these callers want to know if they have registered properly. My office and the county recorders offices will have to modify IT to make it easier for voters to determine which form they used to register and which elections they are eligible to vote in.
38. Uncertainty undermines the integrity of our electoral process. With voters being unsure of which races they will be allowed to vote on, the level of voter unhappiness is sure to increase.

39. In my opinion, Arizona is being forced to implement a dual registration system because both the NVRA and Proposition 200 are valid enforceable laws that must be given effect. But the dual registration system would be completely avoidable if the EAC would accept Arizona’s requirement into the state-specific instructions.

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 on ___________, 2013.

Ken Bennett
Arizona Secretary of State