

**Testimony of**  
**The Honorable Janice K. Brewer**  
**Arizona Secretary of State**  
  
**before the**  
**U.S. Election Assistance Commission**

**October 4, 2007**

Madame Chairman and members of the Commission, my name is Jan Brewer, and I am the Arizona Secretary of State. Let me thank you for conducting this hearing today, and for allowing me to specifically revisit the State of Arizona's voter registration issue dealing with the Federal Form. With me today is Joseph Kanefield, my State Election Director.

From the outset, let me be clear that my mission today is not to debate the merits over requiring proof of citizenship when registering to vote in Arizona. Rather, I am here to appeal to the commission to simply abide by the court rulings which we currently live under to date on this issue.

By way of reminder, you will recall back on October 5th, 2006, the Ninth District Court of Appeals in San Francisco issued a ruling which temporarily froze Arizona's requirement that potential voters show proof of citizenship when registering to vote. By October 18<sup>th</sup>, 2006, that decision was vacated by the U.S. Supreme Court and the proof of citizenship requirements continued forward.

The essential point here is that during that 2 week period in between court rulings, the State of Arizona fully abided by the injunction. That is to say, the courts told us to temporarily stop rejecting voter registrations on the basis of proof of citizenship, and we did. Thus, any voter registration forms the county

recorders received during that time period that were without proof of citizenship, were fully processed and added to the voter rolls.

After the October 18<sup>th</sup> U.S. Supreme Court ruling, we returned to rejecting those voter registration forms which did not have sufficient proof of citizenship as required by Arizona law.

By this past April 20<sup>th</sup>, the Ninth Circuit Court of Appeals in Gonzales v. State of Arizona again noted that the legal challenge to preempt Arizona's proof of citizenship requirement was "not likely to succeed", and on August 28, 2007, the U.S. federal district court judge, dismissed the entire argument over proof of citizenship holding that **the NVRA does not prohibit the State of Arizona from requiring evidence of citizenship at the time of registration.**

Thus, in the face of several court rulings, it would seem to me the Commission would do just as Arizona did and abide by the court rulings until such time as a legal challenge may overturn the proof of citizenship requirement.

As it stands now, by not properly informing voters, you are accomplishing nothing. To be sure, anyone who utilizes the Federal Form and doesn't provide sufficient proof of citizenship is still being rejected in Arizona. Thus, the actions of the EAC to not include instructions on the form proves not to be a loophole to getting around Arizona law, rather it simply serves as a way to disenfranchise voters from participating in the election process.

In the end, Commissioners, I note that Arizona's Presidential Preference Election is now scheduled for February 5<sup>th</sup>, 2008. If history is any indication, there will be an increase in voter registrations in Arizona, and there will be an increase of people utilizing your Federal Form as a result of national voter registration efforts. That could mean an increased amount of rejections for those voters who were

not properly instructed on the Federal Form about Arizona's proof of citizenship requirement.

In the past year, we know of 126 registrations using the Federal Form that were rejected in Arizona's largest county, Maricopa, alone. A full two-thirds of all Federal Forms received in Maricopa County during this time were not processed due to lack of citizenship proof. I'm sure you would agree with me that one voter disenfranchised as a result of the government's actions is one too many.

As to the overall issue of EAC involvement in the NVRA which you are considering today, I cannot get over the irony of this topic.

Back in March of 2006, it was made abundantly clear to me in your letters, explaining that Arizona was preempted by the NVRA from requiring proof of citizenship for voters using the Federal Form. Now, after disenfranchising over 100 voters in Arizona, you decide to hold this hearing questioning the EAC's authority without specific rules, over the Federal Form. It seems to me the first item of business should be to fully rescind the letter sent to me on March 6, 2006. We have court rulings against you, and the Commission hasn't itself determined the scope of its own authority.

So, as you consider the scope of your authority to regulate the federal form, I would caution you to refrain from taking a broad view.

Congress made very clear when it enacted HAVA that it did not want this body to make rules and to the extent it transferred the FEC's rule-making authority over the federal form to you, it did so on a limited basis. You would be wise to follow the FEC's lead and limit the authority you assert over this form to the form itself and not what constitutes a voter registration qualification. This is a determination that must be left to the States.

In conclusion, I once again urge you to follow the federal court rulings rejecting your position and properly instruct Arizona voters using the federal form about Arizona's proof of citizenship requirement. I also ask you to publicly rescind the letter you sent me on March 6, 2006, given that your authority under the NVRA is – at best – now in question.

The fact of the matter is that I have been asking you to stop disenfranchising Arizona voters for several months now. The lack of action by the Commission leaves me with no choice but to pursue filing an injunctive lawsuit against the EAC in federal district court in Arizona. I will ask the Arizona Attorney General to pursue such legal action specifically to compel the EAC to act in accordance with the law as settled to date by the federal courts.

The Election Assistance Commission is not “assisting” Arizona voters by continuing a policy of withholding critical information from them. Rather, you are maintaining a built in policy of misleading Arizona voters into improperly registering to vote. Such a policy is beyond comprehension to us, and I ask for it to stop immediately.

Thank you once again for the opportunity to address the Commission today. I am happy to answer any questions at this time.