

*Statement of EAC Chairman Paul DeGregorio regarding the EAC's Tally Vote of July 6, 2006, involving the request from the Arizona Secretary of State to change the instructions on the Arizona Federal Voter Registration Form.*

The U.S. Election Assistance Commission is mandated by the National Voter Registration Act (NVRA) to create and regulate the National Voter Registration Form. As part of that responsibility, EAC staff routinely fields requests from states to update or change their state-specific instructions, which are part of the National Form. These instructions cover a wide variety of issues from contact information to registration deadlines.

In late 2005 EAC staff contacted the state of Arizona to ascertain the effect of Proposition 200, a new law that was passed by 62 percent of Arizona voters in November 2004 that required, among other things, documentary proof of citizenship for those wishing to register to vote in Arizona elections.

EAC staff reviewed the Form and the information provided by the state of Arizona. In March 2006 the EAC Executive Director informed the Arizona Secretary of State that based on a review of NVRA that took into account the legislative history of its 1993 enactment, the EAC would not change the instructions on the Form to reflect Proposition 200's requirement for proof of citizenship.

Ultimately, Arizona did not accept the EAC's determination regarding the National Voter Form. Because of this, a civil lawsuit, *Gonzalez et al. v. State of Arizona* (No. CV 06-1268-PHX-ROX), was filed in federal district court in Arizona by private parties challenging Arizona's refusal to accept the National Form and the proof of citizenship requirement of Proposition 200. The Plaintiffs asked the court for a temporary restraining order against Proposition 200.

On June 19, 2006, United States District Judge Roslyn O. Silver issued a rather lengthy 15-page opinion that not only denied Plaintiffs request, but included a reasoned legal analysis on why Plaintiffs would not succeed on the merits on the case. In her ruling, Judge Silver, a Clinton appointee, indicated that the plain language of NVRA was clear and therefore the notion of legislative intent did not need to be considered. The Judge indicated that requiring documentary proof of citizenship in the registration process did not violate the NVRA or federal law.

Shortly after the court's ruling in the case, Arizona Secretary of State Jan Brewer wrote the EAC to reiterate the court decision and formally request a change in the form to reflect the decision and Arizona's requirements for documentary proof of citizenship. Secretary Brewer made a compelling case that not changing the Federal Form would cause great confusion and require voters who were not instructed to provide proof of citizenship to take an additional step to have their voter registrations completed. I also read the court ruling very carefully and came to the conclusion that the Judge's ruling was sound and not likely to be overturned. Also, based on my own experience as an election official, I knew that Secretary Brewer's position made great sense. I recall that

during my 8 years as director of elections in St. Louis County, Missouri, many voter registration applications forms could not be finalized because voters had not responded to repeated written requests to supply information that was missing. Thus, leaving out key instructions on the National Voter Registration Form was likely to cause more steps for the voters and possibly keep them from being able to cast a ballot.

I was also very concerned that with the August 14, 2006, voter registration deadline for the Arizona primary election fast approaching, that time was of the essence on this issue. Thus, using my prerogative as a Commissioner, on July 6, I submitted a Tally Vote to change the instructions on the form so that no more Arizona voters would be disenfranchised by the confusion. The Tally Vote subsequently failed on a 2-2 vote, with Commissioner Donetta Davidson supporting my position for an immediate change in the instructions.

Further clarification of the federal government's role in developing the National Registration Form is needed to prevent future confusion. The NVRA allows for the use of two forms to be used in voter registration, a state form and the National Form. While the state may determine the evidentiary requirements of its voter registration form (consistent with the minimum requirements of the NVRA), the EAC determines the procedural and evidentiary requirements of the National Form. Per the NVRA, the National Form must be accepted and used by states. Ultimately, the court's opinion did not address the significance of specific action taken by the EAC as a federal regulatory agency in the creation of the National Form. To address this confusion, I will make every effort to set, as an EAC priority, the issuance of federal regulations regarding the National Form. The EAC is required to prescribe such regulation pursuant to the NVRA (42 U.S.C. 1973gg-7).

As one who has his roots in local government, more often than not I look at issues that come before me with that perspective. I also recognize the important role of the states and especially their right to govern their own elections and to implement election laws that they believe are appropriate for the voters of their state, including statutes that protect the integrity of the process. It is that diversity and competition of ideas, just like the diversity and ideas of the American people, that have made America's democracy strong. At the same time, I am strong believer in the Help America Vote Act and the new federal role in improving the methods of conducting elections in the United States. They have also made America's democracy stronger. I would not have accepted the recommendation from the Congress and the appointment from President George W. Bush to the EAC if I did not believe so. Therefore, each decision I make on this commission is carefully weighed against that philosophy. In this instance, I felt that the voters of Arizona have demonstrated their desire to require proof of citizenship for those registering to vote. The Secretary of State had made a compelling case to support their views. And, a federal court has supported Arizona's analysis of this issue. Thus, I believe the EAC should end the confusion for the voters of Arizona and change the instructions on the Federal Form.

A copy of the Tally Vote, the opinion of the court, and the letters referenced in this statement are also included [on this webpage](#).