

No. 12-71

In The
Supreme Court of the United States

————— ◆ —————
STATE OF ARIZONA, *et al.*,
Petitioner,

v.

INTER TRIBAL COUNCIL
OF ARIZONA, *et al.*,
Respondents.

————— ◆ —————
ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

————— ◆ —————
BRIEF OF THE TWENTY-SIX COUNTY
RECORDERS AND COUNTY ELECTION
DIRECTORS PETITIONERS

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Dated: December 7, 2012

QUESTION PRESENTED FOR REVIEW

Did the court of appeals err 1) in creating a new heightened preemption test under Article I, Section 4, Clause 1 of the U.S. Constitution (“the Elections Clause”) that is contrary to this Court’s authority and conflicts with other circuit court decisions, and 2) in holding that under that test the National Voter Registration Act preempts an Arizona law that requires persons who are registering to vote to show evidence of citizenship?

PARTIES TO THE PROCEEDING

Petitioners in this Court are Arizona's County Recorders and County Elections Directors for thirteen of the fifteen Counties in Arizona, sued in their official capacities, are as follows: Helen Purcell, Maricopa County Recorder; Karen Osborne, Maricopa County Election Director; Lenora Fulton, Apache County Recorder; Angela Romero, Apache County Election Director, who has replaced Penny Pew; Christine Rhodes, Cochise County Recorder; Juanita Murray, Cochise County Election Director, who has replaced Thomas Schelling; Sadie Jo Tomerlin, Gila County Recorder, who has replaced Linda Haught Ortega; Linda Eastlick, Gila County Election Director, who has replaced Dixie Mundy; Wendy John, Graham County Recorder; Judy Dickerson, Graham County Election Director; Berta Manuz, Greenlee County Recorder; Yvonne Pearson, Greenlee County Election Director; Shelly Baker, La Paz County Recorder; Donna Hale, La Paz County Election Director; Carol Meier, Mohave County Recorder, who has replaced Joan McCall; Allen Tempert, Mohave County Elections Director; F. Ann Rodriguez, Pima County Recorder; Brad Nelson, Pima County Election Director; Laura Dean-Lytle, Pinal County Recorder; Steve Kizer, Pinal County Election Director, who has replaced Gilberto Hoyos; Suzanne "Suzie" Sainz, Santa Cruz County Recorder; Melinda Meek, Santa Cruz County Election Director; Leslie Hoffman, Yavapai County Recorder, who has replaced Ana Wayman -Trujillo; Lynn Constable, Yavapai County Election Director; Robyn S. Pouquette, Yuma County Recorder, who has replaced Susan Hightower Marler; and Sue

Reynolds, Yuma County Elections Director, who has replaced Patti Madrill. The twenty-six County Recorders and County Election Directors were Appellees Case No. 08-17094 before the United States Court of Appeals for the Ninth Circuit.

The other Appellees in the Ninth Circuit were Ken Bennett, in his official capacity as Arizona Secretary of State, Candace Owens, in her official capacity as Coconino County Recorder, Patty Hansen, in her official capacity as Coconino County Elections Director, Laurette Justman, in her official capacity as Navajo County Recorder, and Johnathan R. Roes, in his official capacity as Navajo County Elections Director, who has replaced Kelly Dastrup.

The Respondents are Plaintiffs Jesus M. Gonzalez, Bernie Abeytia, Debbie Lopez, Southwest Voter Registration Education Project, Valle Del Sol, Friendly House, Chicanos Por La Causa, Inc., Project Vote and Arizona Hispanic Community Forum, hereinafter referred to as the "Gonzalez Plaintiffs." The Inter Tribal Council of Arizona, Inc.; Arizona Advocacy Network; Steve M. Gallardo; League of United Latin American Citizens; Arizona League of Women Voters of Arizona; and Hopi Tribe, hereinafter referred to as the "ITCA Plaintiffs." Both in the Trial Court and on Appeal the case brought by the Gonzalez Plaintiffs was consolidated with the case brought by the ITCA Plaintiffs.

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OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, dated April 17, 2012, is reported at 677 F.3d 383 (9th Cir. 2012)(en banc) (*Gonzalez III*).

STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Ninth Circuit is dated April 17, 2012. This Court granted the petition for writ of certiorari submitted by the State of Arizona, and twenty-six of Arizona's County Recorders and Elections Directors on October 15, 2012. *Arizona v. Inter Tribal Council of Arizona, Inc.*, No. 12-71, 2012 WL 2921874. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

The relevant Constitutional and statutory provisions are as follows:

U.S. Constitution

**Section 4, Clause 1. Congressional Elections;
Time, Place, and Manner of Holding**

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

National Voter Registration Act

42 U.S.C. § 1973gg. Findings and purposes

(a) Findings

The Congress finds that--

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on

voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

(b) Purposes

The purposes of this subchapter are--

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

42 U.S.C. § 1973gg-4. Mail registration

(a) Form

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of

the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

(b) Availability of forms

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

(c) First-time voters

(1) Subject to paragraph (2), a State may by law require a person to vote in person if--

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person--

(A) who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act [42 U.S.C.A. § 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

(d) Undelivered notices

If a notice of the disposition of a mail voter registration application under section 1973gg-6(a)(2) of this title is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg-6(d) of this title.

42 U.S.C. § 1973gg-7. Federal coordination and regulations

(a) In general

The Election Assistance Commission--

(1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);

(2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures,

forms, and other matters affected by this subchapter;
and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

(b) Contents of mail voter registration form

The mail voter registration form developed under subsection (a)(2) of this section--

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that--

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application--

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

Help America Vote Act

42 U.S.C. § 15483. Computerized statewide voter registration list requirements and requirements for voters who register by mail

(a) Computerized statewide voter registration list requirements

(1) Implementation

(A) In general

Except as provided in subparagraph (B), each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter

registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the “computerized list”), and includes the following:

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

(B) Exception

The requirement under subparagraph (A) shall not apply to a State in which, under a State law in effect continuously on and after October 29, 2002, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

(2) Computerized list maintenance

(A) In general

The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:

(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d), and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).

(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--

(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and

(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.

(iii) Notwithstanding the preceding provisions of this subparagraph, if a State is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that State shall remove the names of ineligible voters from the computerized list in accordance with State law.

(B) Conduct

The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list.

(3) Technological security of computerized list

The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(4) Minimum standard for accuracy of State voter registration records

The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number

If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) Determination of validity of numbers provided

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

(B) Requirements for State officials

(i) Sharing information in databases

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.

(ii) Agreements with Commissioner of Social Security

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 405(r)(8) of this title (as added by subparagraph (C)).

(C) Omitted

(D) Special rule for certain States

In the case of a State which is permitted to use social security numbers, and provides for the use of social security numbers, on applications for voter registration, in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note), the provisions of this paragraph shall be optional.

(b) Requirements for voters who register by mail

(1) In general

Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a) of this section.

(2) Requirements

(A) In general

An individual meets the requirements of this paragraph if the individual--

(i) in the case of an individual who votes in person--

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank

statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot--

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

(B) Fail-safe voting

(i) In person

An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 15482(a) of this title.

(ii) By mail

An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 15482(a) of this title.

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person-

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--

(i) a copy of a current and valid photo identification;
or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B)(i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits with such registration either--

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration; or

(C) who is--

(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);

(ii) provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(iii) entitled to vote otherwise than in person under any other Federal law.

(4) Contents of mail-in registration form

(A) In general

The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:

(i) The question “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.

(iii) The statement “If you checked ‘no’ in response to either of these questions, do not complete this form.”

(iv) A statement informing the individual that if the form is submitted by mail and the individual is

registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

(B) Incomplete forms

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to State law).

(5) Construction

Nothing in this subsection shall be construed to require a State that was not required to comply with a provision of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) before October 29, 2002 to comply with such a provision after such date.

(c) Permitted use of last 4 digits of social security numbers

The last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) of this section shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 (5 U.S.C. 552a note).

(d) Effective date

(1) Computerized Statewide voter registration list requirements

(A) In general

Except as provided in subparagraph (B), each State and jurisdiction shall be required to comply with the requirements of subsection (a) of this section on and after January 1, 2004.

(B) Waiver

If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to “January 1, 2004” were a reference to “January 1, 2006”.

(2) Requirement for voters who register by mail

(A) In general

Each State and jurisdiction shall be required to comply with the requirements of subsection (b) of this section on and after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph.

(B) Applicability with respect to individuals

The provisions of subsection (b) of this section shall apply to any individual who registers to vote on or after January 1, 2003.

Arizona Revised Statutes

§ 16-166. Verification of registration

A. Except for the mailing of sample ballots, a county recorder who mails an item to any elector shall send the mailing by nonforwardable first class mail marked with the statement required by the postmaster to receive an address correction notification. If the item is returned undelivered, the county recorder shall send a follow-up notice to that elector within three weeks of receipt of the returned notice. The county recorder shall send the follow-up notice to the address that appears in the general county register or to the forwarding address provided by the United States postal service. The follow-up notice shall include a registration form and the information prescribed by § 16-131, subsection C and shall state that if the elector does not complete and return a new registration form with current information to the county recorder within thirty-five days, the elector's registration status shall be changed from active to inactive.

B. If the elector provides the county recorder with a new registration form, the county recorder shall change the general register to reflect the changes indicated on the new registration. If the elector indicates a new residence address outside that county, the county recorder shall forward the voter registration form to the county recorder of the

county in which the elector's address is located. If the elector provides a new residence address that is located outside this state, the county recorder shall cancel the elector's registration.

C. The county recorder shall maintain on the inactive voter list the names of electors who have been removed from the general register pursuant to subsection A or E of this section for a period of four years or through the date of the second general election for federal office following the date of the notice from the county recorder that is sent pursuant to subsection E of this section.

D. On notice that a government agency has changed the name of any street, route number, post office box number or other address designation, the county recorder shall revise the registration records and shall send a new verification of registration notice to the electors whose records were changed.

E. The county recorder on or before May 1 of each year preceding a state primary and general election or more frequently as the recorder deems necessary may use the change of address information supplied by the postal service through its licensees to identify registrants whose addresses may have changed. If it appears from information provided by the postal service that a registrant has moved to a different residence address in the same county, the county recorder shall change the registration records to reflect the new address and shall send the registrant a notice of the change by forwardable mail and a postage prepaid preaddressed return form by which the registrant may verify or correct the registration

information. If the registrant fails to return the form postmarked not later than thirty-five days after the mailing of the notice, the elector's registration status shall be changed from active to inactive. If the notice sent by the recorder is not returned, the registrant may be required to provide affirmation or confirmation of the registrant's address in order to vote. If the registrant does not vote in an election during the period after the date of the notice from the recorder through the date of the second general election for federal office following the date of that notice, the registrant's name shall be removed from the list of inactive voters. If the registrant has changed residence to a new county, the county recorder shall provide information on how the registrant can continue to be eligible to vote.

F. The county recorder shall reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship. Satisfactory evidence of citizenship shall include any of the following:

1. The number of the applicant's driver license or nonoperating identification license issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver license or nonoperating identification license that the person has provided satisfactory proof of United States citizenship.

2. A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the county recorder.

3. A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the county recorder of the applicant's United States passport.

4. A presentation to the county recorder of the applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States immigration and naturalization service by the county recorder.

5. Other documents or methods of proof that are established pursuant to the immigration reform and control act of 1986.

6. The applicant's bureau of Indian affairs card number, tribal treaty card number or tribal enrollment number.

G. Notwithstanding subsection F of this section, any person who is registered in this state on the effective date of this amendment to this section is deemed to have provided satisfactory evidence of citizenship and shall not be required to resubmit evidence of citizenship unless the person is changing voter registration from one county to another.

H. For the purposes of this section, proof of voter registration from another state or county is not satisfactory evidence of citizenship.

I. A person who modifies voter registration records with a new residence ballot shall not be required to submit evidence of citizenship. After citizenship has been demonstrated to the county recorder, the person is not required to resubmit satisfactory evidence of citizenship in that county.

J. After a person has submitted satisfactory evidence of citizenship, the county recorder shall indicate this information in the person's permanent voter file. After two years the county recorder may destroy all documents that were submitted as evidence of citizenship.

STATEMENT OF THE CASE

This case concerns Arizona's voter registration statute that requires individuals seeking to register to vote provide satisfactory evidence of citizenship. Twenty-six of Arizona's County Recorders and County Elections Directors seek this Court's reversal of the Ninth Circuit's decision, which held that Arizona's proof of citizenship requirement conflicts with the requirements of the federal voter registration form provided for in the National Voter Registration Act (the "NVRA"). *Gonzalez v. State*, 677 F.3d 383 (9th Cir. 2012)(en banc) (*Gonzalez III*).

In 2004, Arizona voters passed a state initiative, Proposition 200, which amended Arizona Revised Statutes (A.R.S.) § 16-166 by requiring

County Recorders to “reject any application for registration that is not accompanied by satisfactory evidence of U.S. Citizenship.” Joint Appendix (“J.A.”) 171-176. Shortly after Proposition 200’s implementation, a number of plaintiffs filed lawsuits against the Secretary of State, the fifteen County Recorders and fifteen County Election Directors on the following grounds: (1) that it was an unconstitutional poll tax; (2) that it violated the Equal Protection Clause of the Fourteenth Amendment; (3) that it violated the Fourteenth Amendment’s guarantee of the fundamental right to vote; (4) that it violated Section 2 of the Voting Rights Act; (5) that it violated two provisions in the Civil Rights Act; and (6) that it violated the NVRA. J.A. 1, Record 1 and 4, Record 20. The separate cases brought by the Gonzalez Plaintiffs and ITCA Plaintiffs were consolidated by the trial court.

After the district court denied their preliminary injunction motion (J.A. 1, Record 19, Record 183), the Gonzalez Plaintiffs and ITCA Plaintiffs appealed, and a motions panel of the Ninth Circuit Court of Appeals granted their emergency motion for injunction pending appeal. J.A. 1, Record 189. The Supreme Court subsequently vacated the motions panel’s injunction. *Purcell v. Gonzalez*, 549 U.S. 1 (2006). Appellants limited their appeal to the Ninth Circuit to the district court’s denial of a preliminary injunction with respect to Proposition 200’s proof of citizenship requirement. *Gonzalez v. Arizona*, 485 F.3d 1041, 1048 (9th Cir. 2007)(*Gonzalez I*). After briefing and argument, the *Gonzalez I* panel affirmed the district court’s denial of the preliminary injunction ruling as a matter of

law that Proposition 200's proof-of-citizenship registration requirement was not in conflict with the federal form prescribed by the NVRA. *Id.* at 1050-51.

After *Gonzalez I* was issued, the case returned to the district court, and the district court granted the motions for summary judgment filed by the State and Counties on the NVRA issue. *Gonzalez v. Arizona*, No. CV 06-1268 (D. Ariz. Aug. 28, 2007)(order granting summary judgment); J.A. 199. The district court held that the Arizona law requiring evidence of citizenship for voter registration does not conflict with a plain language reading of the NVRA. *Id.*

In the ensuing appeal, the Gonzalez Plaintiffs and ITCA Plaintiffs again challenged, among other issues, the *Gonzalez I* determination that Arizona's proof of citizenship registration requirement does not violate the NVRA.

On October 26, 2010, in a 2-1 decision, the panel held that the NVRA preempted Proposition 200's proof-of-citizenship requirement. *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2010) (*Gonzalez II*). The majority panel also held that it was not bound to follow the previous panel's decision to the contrary by either the doctrine of law of the case or the doctrine of law of the circuit. *Id.* at 1190-91. Given the conflicting rulings by two separate three-judge panels, a majority of the active judges of the court voted to rehear the case en banc. *Gonzalez v. Arizona*, 649 F.3d 953 (9th Cir. 2011).

Upon rehearing, the Ninth Circuit held that Proposition 200's registration provision is preempted by the NVRA under the Election Clause, U.S. Const. Art. 1, § 4, cl 1, because the NVRA and Proposition 200 registration provision do not operate harmoniously as a single procedural scheme for the registration of voters for federal election. *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (*Gonzalez III*). Upon a joint petition for a writ of certiorari filed by the State of Arizona and twenty six of the County Recorders and Elections Directors, this Court granted certiorari. *Arizona v. Inter Tribal Council of Arizona, Inc.*, No. 12-71, Oct. 15, 2012, 2012 WL 2921874.

SUMMARY OF ARGUMENT

Arizona's County Recorders and Elections Directors have a duty to ensure that elections are administered to provide the greatest opportunity for those who are eligible to participate; that the standards governing voter registration be settled, clear and easily administered; and that the officials responsible for conducting elections have the means to safeguard against schemes to influence the outcome of elections by fraud or corruption.

The NVRA does not expressly or implicitly forbid Arizona from requiring additional identifying information to verify a voter's eligibility. Requiring that every new registrant provide proof of citizenship complements the NVRA by satisfying the purpose of the Act. 42 U.S.C. § 1973gg(b). Indeed, Congress stated the Act's purposes were "to protect the integrity of the electoral process; and to ensure that

accurate and current voter registration rolls are maintained.” *Id.*

The proof of citizenship requirement for all new voter registrations provides a significant additional benefit because it simplifies election administration. A uniform voter registration process will result in more consistent treatment of each voter and will make it easier for County election officials to verify a first time voter’s identity and eligibility to vote.

This Court has repeatedly recognized that States have a compelling interest in assuring the integrity of elections, and must be granted the flexibility to combat potential fraud and corruption in the electoral process. While States are fully justified in responding to *the potential* for electoral fraud, history confirms that fraud in the voter registration process, and in the conduct of balloting, does indeed occur. Protecting against the threat of real and potential vote fraud must be balanced against the desire to provide every eligible citizen access to the ballot box.

Election officials strive to decrease public disenchantment and cynicism concerning the process by which our elections are conducted. Such public skepticism is troubling, and will lead to even further reductions in voter turnout. As this Court has recognized, “[v]oter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*, 549 U.S. 1, 4

(2006) (per curiam). It should be easy to vote, but tough to cheat.

ARGUMENT

Congress enacted the National Voter Registration Act in 1993 (“NVRA”). It prescribes at least three methods for registering voters for federal elections. 42 U.S.C. § 1973gg-2(a). These methods are: (1) “by application made simultaneously with an application for a motor vehicle driver’s license,” *id.* § 1973gg-2(a)(1); (2) “by mail application,” *id.* §§ 1973gg-2(a)(2), 1973gg-4; and (3) “by application in person,” *id.* § 1973gg-2(a)(3). States must “establish procedures to register” voters through all three methods “notwithstanding any other Federal or State law.” *Id.* § 1973gg-2(a); *Young v. Fordice*, 520 U.S. 273, 275 (1997).

The NVRA directs the Election Assistance Commission (“EAC”) to develop a federal form for use in registering voters by mail and “in consultation with the chief election officers of the States,” 42 U.S.C. § 1973gg-7(a)(2); 42 U.S.C. §§ 15321 *et seq.* The federal form must “enable the appropriate State election official to assess the eligibility of the applicant.” 42 U.S.C. § 1973gg-7(b)(1). One of the express eligibility criteria that must be included on the form is a question about United States citizenship. *Id.* § 1973gg-7(b)(2)(A).

The NVRA's four purposes are:

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

(2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of *eligible* citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

42 U.S.C. § 1973gg(b)(emphasis added).

One of Congress's goals in adopting the NVRA was to provide clear guidelines "for Federal, State, and local governments to implement [voter registration] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 42 U.S.C. § 1973gg(b)(2). But the Ninth Circuit's disposition of this case—first finding Proposition 200 not preempted, then finding it to be preempted years later—has only caused confusion among voter registration organizations, election officials, and voters. The Ninth Circuit's *en banc* decision to prohibit enforcement of a law enacted by initiative nullifies the policy choice made by the voters of Arizona. Arizona is a sovereign State, its people directly enacted Proposition 200, and the

Ninth Circuit's decision unjustifiably increases the federal government's involvement in state and local elections.

I Election officials have a duty to maintain accurate voter registration rolls while registering eligible voters for Federal, State, and local elections.

The Ninth Circuit mentions that the NVRA has “four articulated purposes,” *Gonzalez III*, 677 F.3d at 403, but saw only one as controlling: “Proposition 200’s registration provision is discordant with the NVRA’s goal of streamlining the registration process.” *Id.* at 400. But the NVRA is a balance of multiple interests with more than one purpose. “None of these purposes is served when individuals who are not citizens register to vote. See *John v. United States*, 247 F.3d 1032, 1036-37 (9th Cir. 2001) (“We must not ‘interpret federal statutes to negate their own stated purposes.’”).” *Gonzalez v. Arizona*, 624 F.3d 1162, 1210 (Kozinski, J., dissenting). “The majority never explains why a statute enacted to ‘protect the integrity of the electoral process’ and ‘ensure’ that voter rolls are ‘accurate’ must preclude states from confirming that those who wish to register are, in fact, eligible to vote.” *Id.*

The Ninth Circuit’s narrow reading of the NVRA is inconsistent with the statutory language and was rejected by this Court in *Crawford v. Marion County Election Board*, 553 U.S. 181(2008). In upholding Indiana’s photo identification requirement, the Court examined the two recently

enacted statutes, the NVRA and the Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15483, which both contain provisions consistent with a State's choice to verify a citizen's eligibility to vote. "In the ... NVRA ... Congress established procedures that would both increase the number of registered voters and protect the integrity of the electoral process." *Crawford*, 553 U.S. at 192.¹ HAVA requires the States to verify voter information contained in a voter registration application and specifies either an "applicant's driver's license number" or "the last 4 digits of the applicant's social security number" as acceptable verifications. *Id.*; 42 U.S.C. § 15483(a)(5)(A)(i). HAVA and the NVRA contain provisions that are consistent with permitting election officials to verify the eligibility of voters.

Congress was apparently interested in "protect[ing] the integrity of the electoral process," 42 U.S.C. § 1973gg(b)(3), by reducing state-imposed obstacles to federal registration. Such obstacles include any requirement by a State for notarization or formal authentication of the federal voter registration form. 42 U.S.C. § 1973gg-7(b)(3). Requiring evidence of citizenship, which is as simple

¹ See *Lake v. Neal*, 585 F.3d 1059, 1060 (7th Cir. 2009) ("Congress passed the NVRA to (1) make it easier to register to vote and (2) to help protect the integrity of the process by ensuring that accurate voter registration rolls are maintained."); *U.S. Student Ass'n Foundation v. Land*, 546 F.3d 373, 391 (6th Cir. 2008) (NVRA has "dual objectives" of "increas[ing] the number of eligible citizens who register to vote in elections for federal office, while also assuring that 'accurate and current voter registration rolls are maintained.'" Emphasis in original.).

as providing a driver's license number,² was not included in the list of what may not be included on the federal form. Instead, proving one's eligibility to register to vote at the time of registration ensures that only eligible voters cast their ballots on election day. "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process." *Crawford*, 553 U.S. at 196. The *Crawford* analysis of the state's interests was not confined to the polling places, but encompasses the entire "election process." *Id.* By focusing solely on a single purpose of the NVRA, the Ninth Circuit's decision conflicts with *Crawford*.

The Ninth Circuit's limited view of the intent of the NVRA is not supported by the text of the statute. The NVRA expressly authorizes states to require "such identifying 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). This provision permits the type of "identifying information" that Arizona requires and is "necessary to enable" election officials to assess the eligibility of voters. "Had Congress meant to enact a comprehensive code of voter registration, it could have said so in the NVRA, but it didn't." *Gonzalez II*, 624 F.3d at 1208 (Kozinski, J., dissenting). Instead, local government officials must maintain current and accurate voter

² A.R.S. § 16-166(F)(1).

registration lists through a comprehensive voter registration system.

Despite Congress having granted the States authority to assess eligibility, the Ninth Circuit's ruling actually restricts the State's authority by effectively limiting the verification of eligibility to only the signature of the registrant. This statutory interpretation ignores the NVRA's specific authority to States to determine what information other than the signature might be requested. 42 U.S.C. § 1973gg-7(b)(1).

The NVRA imposes certain mandates on States and describes those mandates in detail, but implementation of NVRA is not purely ministerial. In *Young v. Fordice*, 520 U.S. 273, 286 (1997), the Court reviewed Mississippi's plan for separate state and federal voter registration systems in its attempt to comply with requirements of the NVRA for federal registration. The *Fordice* Court found that the proposed federal voter registration process included practices and procedures that were significantly different from state's old system. "The NVRA still leaves room for policy choice. The NVRA does not list, for example, all the other information the State may – or may not – provide or request." *Id.*

These policy choices were recognized by original Ninth Circuit panel, which determined that the NVRA "plainly allow[s] states, at least to some extent, to require their citizens to present evidence of citizenship when registering to vote." *Gonzalez I*, 485 F.3d at 1050-51. Restricting the States' verification of eligibility to just the signature of the

registrant conflicts with the decision of the Sixth Circuit in *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000). In *McKay*, the court upheld the state requirement that voter registration applicants provide valid social security numbers to register. “The NVRA does not specifically forbid use of social security numbers.” *Id.* at 755. Thus, Ninth Circuit’s reading of the language and structure of the NVRA conflicts with that in *Fordice* and *McKay*.

In addition, the NVRA gives the states the authority to come up with their own NVRA-compliant forms rather than the federal form. See 42 U.S.C. § 1973gg-4(a)(2). “[T]he NVRA itself expressly, not merely implicitly, authorizes a state to ‘develop and use’ its own form ‘for the registration of voters in elections for Federal office,’ in addition to accepting and using the [federal form].” *Gonzalez III*, 677 F.3d at 445 (Rawlinson, J., dissenting). “[T]he plain text creates a minimum standard through the federal form and allows a state to require more as long as it is within the bounds of § 1973gg-7(b).” *Id.* States retain the task of determining that an applicant is eligible to register to vote and that the submitted registration form complies with state law.

II. Voter registration standards should be settled, clear and easily administered.

Because Arizona cannot apply its eligibility requirements to federal elections, Arizona’s Secretary of State and the County Recorders could have created separate federal-state registration regimes to enforce both state and federal law. “[A]n

Arizona applicant meeting the Federal Form requirements, but lacking satisfactory evidence of citizenship, would have to be allowed to vote for federal officials but could not vote for state officials.” *Gonzalez III*, 677 F.3d at 449 (Rawlinson, J., dissenting). This system would have required Arizona to “track whether . . . residents are registered to vote for federal elections, state elections, or both” and to distinguish between these classes of voters on Election Day. *Id.* But the State and Counties did not want to create any more confusion for the voters by having a separate federal and State registration system.

Instead, just weeks before the 2012 General Election, Arizona’s Secretary of State, County Recorders, and County Elections Directors scrambled to develop a dual voter registration process: one for the State form and one for the federal form. App.1.³ For the State form, the new process directs the County Recorders to continue processing the registrations by requiring satisfactory evidence of citizenship. In addition, the County Recorders shall continue rejecting State forms that do not evidence proof of citizenship.

For the federal form, the new process directs the County Recorders to continue accepting the federal forms, but not to reject any federal form that does not provide satisfactory evidence of citizenship. To comply with HAVA, all first time registrants must prove his or her identity by providing an

³ The Appendix attached to this Brief is referred to as App.1; http://www.azsos.gov/election/Electronic_Voting_System/VR_Addendum.pdf.

Arizona driver's license number or some other form of acceptable identification before being allowed to vote. 42 U.S.C. § 15483(a)(5)(A); App. 1. As a result, all first time registrants that use a federal form must show identification at the time of registering or at the polling place on election day. App. 1. If the registrant's identity cannot be verified from the information given on the federal form, the registration is placed on suspense pending verification of the registrant's identity.

Arizona's voter registration system is now splintered. The Ninth Circuit's decision forced the creation of a system that elevates form over substance.

III. The NVRA and Arizona's voter registration process requiring proof of citizenship do not conflict.

The text of the NVRA does not directly address the precise question at issue, namely whether states can ask for supplemental proof of citizenship. The statute says that "[e]ach State shall accept and use the mail voter registration application form prescribed by the [Election Assistance Commission]." 42 U.S.C. § 1973gg-4(a)(1). It likewise requires "[a]cceptance of completed voter registration application forms" at state and local government offices, which must be transmitted "to the appropriate State election official." 42 U.S.C. § 1973gg-5(a)(4)(iii). The statute doesn't obviously prohibit supplemental state requirements. By requiring states to "accept and use" the federal form "for the registration of voters in

elections for Federal office,” 42 U.S.C. § 1973gg-4(a)(1), Congress could not have meant to preclude states from imposing additional requirements. Neither “accept” nor “use” has such a preclusive meaning. *Gonzalez II*, 624 F.3d at 1206 (Kozinski, J., dissenting).

“There’s no question that Arizona accepts and uses the federal form for the information contained in it. Arizona only asks for proof of citizenship *in addition* to the form in order to complete the registration process.” *Id.* The *only* thing the NVRA expressly prohibits states from requiring is “notarization or other formal authentication.” 42 U.S.C. § 1973gg-7(b)(3). That specific prohibition in the NVRA is a strong indication that other prohibitions were not intended. *Gonzalez II*, 624 F.3d at 1206 (Kozinski, J., dissenting) (citing *United States v. Cabaccang*, 332 F.3d 622, 630 (9th Cir.2003); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 793 n. 9 (1995)).

By looking at only one of the purposes of the NVRA, the Ninth Circuit’s analysis creates the false impression that the NVRA is inconsistent with Arizona’s law. To the contrary, Arizona’s law is consistent with NVRA’s purpose to protect the integrity of the electoral process.” *Crawford v. Marion County Election Board*, 553 U.S. 181, 192 (2008). “There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election

process.” *Crawford*, 553 U.S. at 196. The State and County election officials’ interest in the orderly and accurate administration of the election process starts with registering only those eligible to vote.

Protecting the integrity of the electoral process is necessary to the achievement of the other NVRA purposes. For example, Congress recognized that the integrity of the electoral process was crucial to “enhanc[ing] the participation of eligible citizens as voters.” § 1973gg(b)(2). This Court has maintained that states must structure the electoral process “to maintain the integrity of the democratic system.” *Burdick v. Takushi*, 504 U.S. 428, 441 (1992)(quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). Arizona’s record shows that non-citizens have registered, or attempted to register to vote. Between 1996 and 2006, “as many as 232 non-citizens tried to register to vote and that the State prosecuted ten of those 232 alleged non-citizens.” *Gonzalez v. Arizona*, 485 F.3d 1041, 1048 (9th Cir. 2007) (*Gonzalez I*). Arizona’s voter registration requirements are justified because of the compelling interest in preventing election fraud, ensuring only eligible voters are registered to vote, and maintaining public confidence in the electoral system.

A. Voter confidence is a fundamental component of ensuring democratic participation.

The right of citizens to select their representatives is one of the bedrocks of our democracy. “No right is more precious in a free

country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). The Supreme Court has long recognized the importance of an electorate confident in the integrity of its election systems. “Preserving the integrity of the electoral process, preventing corruption, and sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government are interests of the highest importance. . . . Preservation of the individual citizen’s confidence in government is equally important.” *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 789 (1978) (citations omitted).

Likewise, in *Federal Elections Comm’n v. National Right to Work Committee*, the Supreme Court recognized the dual governmental interests in “preventing both actual corruption and the appearance of corruption,” 459 U.S. 197, 210 (1982). Voter fraud – whether real or perceived, widespread or isolated – has a debilitating effect on lawful participation. Recognizing that voter fraud cancels out legitimate votes, the Court remarked that “the right of suffrage can be denied by debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds v. Sims*, 377 U.S. 533 (1964). Even the appearance of corruption erodes public confidence and deters legitimate voters from voting.

Arizona's proof of citizenship for voter registration is essential to ensure that only eligible voters vote. States inevitably must adopt regulations to secure the ballot and ensure that ballots are cast only by legitimate voters. Proof of citizenship is a non-discriminatory means to accomplish election security leading to enhanced public confidence in ballot integrity.

B. States Must Take Preventative And Preemptive Measures To Secure Elections Against Voter Fraud.

Even the threat or perception of election fraud can damage the integrity of an election. In 1982 the Supreme Court held it would not "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *Federal Election Comm'n v. National Right to Work Committee*, 459 U.S. 197, 210 (1982)(preventing campaign finance corruption). Lawmakers must make take the necessary action to prevent corruption in the election process. "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." *Crawford*, 553 U.S. at 196.

Arizona's County Recorders and Elections Directors must protect the interests of the electorate up front rather than attempting to remedy the harm once fraud has occurred. In *Reynolds v. Sims*, this Court equated vote dilution with voter disenfranchisement. 377 U.S. 533, 555 (1964). This theme has continued other election cases.

Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, . . . or diluted by stuffing of the ballot box, . . . No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.

Wesberry v. Sanders, 376 U.S. 1, 17 (1964) (internal citations omitted); see also *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

The importance of preventing voters' legal ballots from being diluted by ballots cast by ineligible voters cannot be emphasized enough. Voter secrecy laws make it nearly impossible to find and retract an illegal ballot once it has been cast. Because of the compelling importance of preventing vote dilution and the near impossibility of reversing its effects, Arizona is justified in requiring a pre – registration security measure like proof of citizenship to prevent illegal votes from being cast in the first place.

CONCLUSION

For the reasons stated above, this Court should reverse the Ninth Circuit's decision.

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APPENDIX

ADDENDUM RELATING TO VOTER
REGISTRATION

**Proof of Citizenship Requirement-State Voter
Registration Form**

Arizona voters approved Proposition 200 at the November 2, 2004 general election. The Proposition requires that voters prove United States citizenship prior to registering to vote. The County Recorder must reject any registration that is not accompanied by satisfactory evidence of United States citizenship.

SPECIAL NOTE

NOTE REGARDING GONZALEZ V. ARIZONA

Notwithstanding Proposition 200, until otherwise directed the County Recorder shall not reject an application that is made via the form developed by the United States Election Assistance Commission for use in registration in federal elections (Federal Form) solely because it is not accompanied by satisfactory evidence of United States Citizenship. *See* Gonzalez v. Arizona, 677 F.3d 383 (9th Cir. 2012); see also Order of the District Court,

Satisfactory evidence of citizenship is specified in ARS § 16-166(F) and includes the applicant's driver license number or non-operating identification license number issued after October 1, 1996 by the department of transportation or the equivalent governmental agency of another state within the

App.2

United States, if the agency indicates on the applicant's license that the person has provided satisfactory proof of United States citizenship.

[Ariz. Atty. Gen. Op. No. I05-001]

The other “satisfactory evidence” of citizenship includes:

- a copy of a birth certificate. Supporting legal documentation shall be provided if the name on the birth certificate is not the same as registrant’s current name (i.e. marriage certificate, court documented name change).
- the counties shall also accept a United States birth certificate as proof of citizenship where the name on the birth certificate is different from the voter registration if the following five fields match on both the voter registration form and the birth certificate:
 - 1) First Name,
 - 2) Middle Name,
 - 3) Place of Birth,
 - 4) Date of Birth, and
 - 5) Parents’ Name.
- in the event a United States citizen is born abroad in a non-military installation, they should have registered with the Department of State and obtained a “Certificate of Birth Abroad.” This document counts as a birth certificate.
- pertinent pages of a United States passport identifying the registrant

- United States naturalization documents or the number of the certificate of naturalization (Alien Registration Number).
- a driver license or non-operating license from another state within the United States if the license indicates that the applicant has provided satisfactory proof of citizenship
- the registrant's Bureau of Indian Affairs Card Number, Tribal Treaty Card Number, Tribal Enrollment Number, or Census Number
- Tribal Certificate of Indian Blood or Tribal or Bureau of Indian Affairs Affidavit of Birth

In addition to presenting the evidence of citizenship documentation, a person registering to vote must sign a statement declaring that he or she is a United States citizen and acknowledging that executing a false registration is a class 6 felony. It is a state and federal crime to falsely claim to be a United States citizen when registering to vote.

[ARS §§ 16-152(A)(14); 16-152(A)(18); 16-166; 18 U.S.C. § 1015(f)]

Qualifications of Voters in City or Town Elections

No person is entitled to vote at an election in a city or town who has not been a qualified elector as defined in ARS § 16-121 in the city or town for **29 days before** the election.

A person who has resided for at least **29 days before** an election in an area annexed at least 29 days before an election by a city or town shall be entitled to vote at the city or town election, provided

the person is a qualified elector as defined in ARS § 16-121.

Charter cities may have different qualifications.

[Ariz. Const. Art. XIII, § 2; ARS § 9-822]

Voter Registration Processing-State Form

- 1) A new completed voter registration form comes in to the Recorder.
- 2) The voter registration form must be accompanied by proof of citizenship pursuant to ARS § 16-166(F). If the form is not accompanied by proper proof of citizenship, the voter registration form is not valid and either will not be entered into the system or if it was entered into the system, the record shall be canceled. If the registrant subsequently provides proof of citizenship, it must be accompanied by a new voter registration form and a new registration date.
- 3) If proof of citizenship has been provided and the form contains the five elements required by law—name, residence address, date of birth, signature and citizenship—it is entered and sent to the Secretary of State even if it does not contain the driver license number, nonoperating identification license number or the last four digits of the social security number.
- 4) If the voter registration form does not have one or more of the five elements, the information is put in a pending file until the data is acquired. The

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registration cannot be considered received until the five elements are completed. The County Recorder will attempt to contact the registrant by phone or mail to obtain the missing information or a completed voter registration form. Any letter mailed shall include information informing the voter of approaching voter registration deadlines.

- 5) The Secretary of State will coordinate with the Arizona Motor Vehicle Division to check the voter file against the driver license number or nonoperating identification license number and the last four digits of the social security number.
- 6) The Secretary of State will add to the official registration file the driver license number or nonoperating identification license number, and the last four digits of the social security number, if there is sufficient matching information.
- 7) For any new voter registration that does not contain the driver license number or nonoperating identification license number or the last four digits of the social security number, the Secretary of State will match available data with the Arizona Motor Vehicle Division. If there is a match, data from MVD will be added to the record.
- 8) The Secretary of State will assign a unique identifying number to any registrant who does not have a driver license number, nonoperating identification license number or social security number.

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- 9) Any registrant modifying their registration record in the county they are currently registered in does not need to provide proof of citizenship. If the registrant is registered in Arizona and now is registering in a new county, the registrant is required to provide proof of citizenship pursuant to ARS § 16-166(G).
- 10) The Secretary of State will return the file to the Recorder with a unique identifying number assigned to each registrant. Additionally, counties may maintain their own voter identification numbers. The counties will determine what number to use as the voter registration identification number that is printed on the citizen's voter registration card.
- 11) The Secretary of State will also send the Recorder an exception report. The Recorder will review the report for items such as duplicate voter registrations, felons, death records, and processing errors such as transposed numbers. If the driver license or social security records conflict with the registrant's information that was provided by the County Recorder, the registrant's information shall be changed to reflect the correct information. The County Recorder shall notify the registrant by letter to confirm which information is correct.
- 12) If there are any discrepancies between the Motor Vehicle Division record or County Recorder record in the name, driver license number, nonoperating identification license number or the last four digits of the social security number, the

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Recorder shall send a letter to the registrant to confirm which information is correct.

- a. If a registrant submits a voter registration application in which the Arizona driver license number does not match the records at the Motor Vehicle Division (MVD) and the driver license number is being used for proof of citizenship purposes, the county shall cancel the voter registration and send a letter to the registrant providing the registrant the opportunity to remedy the error. (See SAMPLE FORMS: Uniform Correspondence: AZ DLN Did Not Match at MVD.) The registration effective date will be the date the new voter registration form is signed, not the date of the form that had the incorrect driver license number.
 - b. If a registrant submits a voter registration application where the name, last four digits of social security number and/or the date of birth does not match the Motor Vehicle Division or the Social Security Administration, the Recorder shall send a letter to the registrant to confirm which information is correct. (See SAMPLE FORMS: Uniform Correspondence: MVD Non Match.) The registration effective date will be the date the original voter registration form was signed.
- 13) If the registrant does not provide the driver license number, nonoperating identification license number or the last four digits of his/her social security number, by signing the form, the voter is indicating that he/she does not have a

driver license number, nonoperating identification license number or social security number.

- 14) The voter registration form, accompanied by acceptable proof of citizenship must be accepted for processing even if the citizenship question is not answered. The registration shall not be completed, however, until the citizenship question is answered “yes” as required by ARS § 16-121.01 and 42 U.S.C. § 15483(b)(4)(B). The County Recorder shall notify registrants by letter in accordance with A.R.S § 16-134(B) and provide the registrant an opportunity to make a check mark or other appropriate indicator showing that the registrant answered “yes” to the question regarding citizenship. [*Id.*] For the purpose of voter registration, an appropriate indicator includes making a check mark in the box, placing an X in the box, circling the box, shading or any other method involving the “yes” box that indicates the registrant is a citizen.
- 15) All citizenship verification information collected pursuant to ARS § 16-166(F) shall be maintained by the County Recorder in a manner that the County Recorder reasonably believes will ensure that no unauthorized person has access to the information.

The Recorder shall maintain copies of citizenship proof provided by the voter batched by month and year. [ARS § 16-166(J)]. After two years, the County Recorder may destroy all documents that were submitted as evidence of citizenship. If the

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County Recorder chooses to destroy these documents, the County Recorder must use due diligence to properly discard or dispose of the records.

- 16) If only the alien registration number from the naturalization documents is provided for citizenship purposes, the number shall be verified with the United States Citizenship and Immigration Services before the registrant may be added to the registration rolls.

To conduct the verification, each County Recorder shall establish an account with the United States Citizenship and Immigration Services to utilize the Systematic Alien Verification for Entitlements (SAVE) program. This program allows the Recorders access to information contained in the Verification Information System (VIS) database.

The alien registration number is the only number from a registrant's naturalization documents that can be validated against the SAVE system. The validation will indicate if the registrant is a citizen of the United States.

There is a delay from when a new citizen takes his or her oath at the citizenship ceremony until that citizen's alien registration number is placed in the SAVE database. If the registration is received within 14 days of the voter registration deadline, the County Recorder shall notify the registrant that further citizenship proof may be necessary in order to assure that the voter is

registered on time. The correspondence shall indicate that the registrant may present his or her naturalization papers to the Recorder to satisfy the proof of citizenship requirement.

If a registrant provides a number that cannot be validated by the SAVE system, the County Recorder shall take all reasonable steps necessary to obtain the alien registration number from the registrant, including, but not limited to, contacting the voter by phone and sending correspondence. The registrant is not officially registered until they satisfy the proof of citizenship requirement. If the County Recorder obtains the alien registration number from the registrant, the Recorder may enter the alien registration number on the form and validate the number through the SAVE system. If the number is validated, the Recorder may use the date the original form was signed as the registration date. If after 120 days, the registrant has not provided a valid alien registration number, the County Recorder shall send the registrant correspondence stating that the registration form has been rejected and the reason why along with a new voter registration form.

- 17) If the driver license number entered on the voter registration form was issued on or before October 1, 1996, or the driver license type is "F" (foreign or out of country) or "N" (commercial foreign or out of country), the Recorder shall take the following steps:

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- a. Ensure the driver license number was entered correctly. If the Recorder determines it was not, the Recorder shall correct the driver license number on the county system and the new driver license number match will be reported on the statewide voter registration database (VRAZ) the next day.
 - b. If the driver license number was entered correctly, check the current database to determine if the registrant is currently registered to vote in that county. If the voter is registered to vote in that county and is only updating the voter registration information, no citizenship proof is required.
 - c. If it is determined that the voter is a first time registrant or is reregistering in a different county, check to see if other citizenship documents were provided with the voter registration application. If the registrant provided other satisfactory proof of citizenship, the registration should be accepted.
 - d. If no satisfactory proof of citizenship is provided, the voter registration record should be cancelled and the voter should be contacted within ten business days of receipt of the registration form as provided by ARS § 16-134 with a request to provide proper proof of citizenship. (See SAMPLE FORMS: Uniform Correspondence: 2nd Notice that Citizenship Documentation Needed.)
- 18) A legible photocopy of pertinent pages of the registrant's United States passport is considered proof of citizenship. The pertinent pages of a

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United States passport are considered the pages that contain the passport number, name, nationality, date of birth, gender, place of birth, and signature.

- 19) If a registrant submits tribal documentation or a tribal number on his/her form, it will be presumed valid as proof of citizenship for voter registration purposes.
- 20) The registrant may present to the Recorder the registrant's United States naturalization documents or other documents of proof that are established pursuant to the Immigration Reform and Control Act of 1986 as acceptable proof of citizenship.
- 21) The registrant may present or send the Recorder a legible photocopy of the applicant's birth certificate that verifies citizenship as acceptable proof of citizenship.
- 22) If a registration is conducted in person at the County Recorder's office, the County Recorder personnel shall indicate on the voter registration form (1) that the person provided proof of citizenship, (2) the type of citizenship proof provided, and (3) the name and initials of the employee who made the verification.
- 23) County Recorder personnel who attend naturalization ceremonies may assist the new citizens in registering to vote. The county personnel shall verify the alien registration number, write their name and initials on the

voter registration form, and date the form. If voters are registered at the ceremony from outside the county, the county personnel conducting the voter registration drive shall bundle the registrations by county and send them to the County Recorder with an official cover letter stating that all alien registration numbers were verified by County Recorder personnel. Neighboring counties may accept the voter registration form without further proof of citizenship. (See SAMPLE FORMS – Uniform Correspondence - County Recorder Naturalization Ceremony Certification.)

- 24) If all fields are filled in on a voter registration form they shall be entered into the voter registration system.
- 25) If a party preference entered on a voter registration form starts with “DEM” it shall be mapped to Democratic. “REP” or “GOP” shall be mapped to Republican.
- 26) If a party preference entered on a voter registration form is not on the list of recognized parties and is not a known party, then the party preference for that registrant will be “party not designated.”
- 27) If a party preference entered on a voter registration form is not recognized as a political party by the state or a county, city or town, then that party preference shall be entered on the voter registration system but will be reported on all reports as “other.”

- 28) If a paper application is for an existing active or inactive registrant in the county receiving the application and the application is received with the party preference field blank, do not change the existing party preference recorded on the registrants record. Do not change the party preference to “no party preference” on an existing record.
- 29) The voter registration change effective date shall be used to indicate the voter has submitted a new voter registration form changing their name, address, party preference or other information on their existing voter registration record. This date shall be used to determine election eligibility or eligibility to sign a particular petition.
- 30) The County Recorder shall issue a voter identification card to a registrant that should include the following information:
- “Voter Identification Card”
 - county name
 - County Recorder contact information
 - voter ID number
 - party preference
 - date of voter registration
 - voter full name
 - voter full residence address
 - voter precinct/district information
(congressional and legislative)

The mailer that accompanies the voter identification card should contain the same information on the card and the following information:

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- information stating this is the voter's new card and to discard any old cards
- information on use of card (bring to polling location)
- where to call if information on card is incorrect
- County Recorder name
- how to find polling place instructions
- notification that the voter's name appears in the general register
- information on the identification at the polls requirement
- information on how to request an early ballot
- reasons a person needs to re-register

National Voter Registration Act Form Processing

Officials responsible for the registration of voters shall obtain a copy of the Order in *Gonzalez v. Arizona*, see *supra*, Note at page 8, and make themselves familiar with its contents.

Officials responsible for the registration of voters shall obtain a copy of the Federal Form and instructions developed by the United States Election Assistance Commission, *available at* http://www.eac.gov/voter_resources/register_to_vote.aspx, and make themselves familiar with its contents.

Introduction

Pursuant to the Order, the responsible official may not reject a Federal Form because the applicant has not provided evidence of citizenship.

As a result of the Order, the Secretary of State, in consultation with the County Recorders, has examined procedures regarding the processing of Federal Forms in Arizona.

These procedures are consistent with the National Voter Registration Act (NVRA) and the Help American Vote Act (HAVA).

Federal Form Procedures

The following is the procedure for processing the Federal Form:

Receipt of Federal Form

The officer charged with evaluating a Federal Form shall first determine if the form contains name, date of birth (DOB), residence address and signature, of the applicant. If the form contains this information the officer shall proceed with the following steps. If the form is missing any one of the four pieces of information, the form is incomplete and correspondence shall be sent to the registrant asking for the additional information.

Federal Form Citizenship Check Box

If an applicant for voter registration fails to answer the question regarding citizenship included in the Federal Form (the citizenship check box) the county official shall notify the applicant of the failure and

provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election by placing the applicant in suspense and providing appropriate correspondence.

Arizona Driver License Number or AZ Non-Operating License Number Or Last Four Digits of Social Security Number

If the Federal Form arrives and contains an Arizona Driver License Number or Arizona Non-Operating License Number, the information contained on the form is entered into the voter registration system and compared to the Motor Vehicle Division database.

- If there is a match on Name, DOB and the license number and the license type indicates citizenship, the voter registration record is made active. The registrant does not need to provide any other information.
- If there is a match on Name, DOB and the license number and the license type indicates non-citizenship, the record is placed in suspense and correspondence shall be sent to the registrant asking for additional information indicating citizenship. *See Gonzalez v. Arizona*, No 06-1268-PHX-ROS, Order of August 20, 2008 at 11-12 (finding that there is a reasonable relationship between the type of license issued and a person's citizenship status).
- If there is not a match on Name, DOB, and the license number, the record is placed in

suspense and correspondence shall be sent to the registrant asking to correct the license number or to provide other identity information as required by HAVA.

- If the person includes their name, DOB, and last four digits of their Social Security Number, and there is a match, the voter registration record is made active. The registrant does not need to provide any other information.
- If the person includes their name, DOB, and last four digits of their Social Security Number and there is not a match, the record is placed in suspense and correspondence shall be sent to the registrant asking to correct the license number or to provide other identity information as required by HAVA.
- For any new voter registration that does not contain the driver license number or nonoperating identification license number or the last four digits of the social security number, the Secretary of State will match available data with the Arizona Motor Vehicle Division. If there is a match, data from MVD will be added to the record.
- The Secretary of State will assign a unique identifying number to any registrant who does not have a driver license number, nonoperating identification license number or social security number.
- If the registrant corrects the information or provides other satisfying identification as identified in HAVA, the registrant's voter registration record will be made active.

Alien Registration Number

If the Federal Form arrives and contains an Alien Registration Number, the information contained on the form is entered into the system and compared to the SAVE database.

- If there is a match on Name, DOB and the Alien Registration Number and the SAVE database indicates citizenship, the voter registration record is made active.
- If there is a match on Name, DOB and the Alien Registration Number and the SAVE database indicates non-citizenship, the record is placed in suspense and correspondence shall be sent to the registrant asking for additional information indicating citizenship.
- If there is not a match on Name, DOB, or license number, the record is placed in suspense and correspondence shall be sent to the registrant asking for information to correct the record. *See 42 U.S.C. 15483 (a)(5)(A).* If the registrant corrects the information or provides other satisfying identification as identified in HAVA, the registrant's voter registration record will be made active.

Tribal Identification

If the Federal Form arrives and contains tribal identification, the information contained on the form is entered into the system and the record is made active.

No License Number, Last Four Digits of Social Security Number, or any other identity information provided.

If the registrant does not provide a license number, last four digits of social security number, or any other identity information as prescribed by HAVA, the record is placed in suspense and correspondence shall be sent to the applicant asking for information to correct the record. *See* 42 U.S.C. 15483 (a)(5)(A).

**FIRST TIME VOTERS IN THE STATE
WHO REGISTER USING THE FEDERAL
FORM**

The officer shall determine whether the person is a first time voter in Arizona by comparing the information provided on the Form, including name, DOB, or other information to determine whether or not person has been registered. If the applicant is a First Time Voter who registers and does not provide copies of any of the documents described below in paragraphs 1 or 2, the applicant's registration shall be placed in suspense until the occurrence of one of the following:

1. The presentation to the appropriate official of a current and valid photo identification or;
2. The presentation of a copy satisfactory evidence of identity, which includes one of the following:
 - Your Arizona driver's license number or non-operating identification

license number that matches your record at the Arizona Motor Vehicle Division

- Your last four digits of Social Security Number that matches your record at the Social Security Administration
- Utility bill of the elector that is dated within ninety days of the date of the election. A utility bill may be for electric, gas, water, solid waste, sewer, telephone, cellular phone, or cable television
- Bank or credit union statement that is dated within ninety days of the date of the election
- Valid Arizona Vehicle Registration
- Indian census card
- Property tax statement of the elector's residence
- Tribal enrollment card or other form of tribal identification
- Vehicle insurance card
- Recorder's Certificate
- Valid United States federal, state, or local government issued identification, including a voter registration card issued by the county recorder
-

Correspondence shall be sent to the applicant stating that:

Federal law requires you to show proof of identification the first time you vote. Proof of identification includes a current and valid photo identification or a current utility bill, bank statement, government check, paycheck, or

government document that shows your name and address. You may submit a copy of this identification to [the county recorder]. There are additional identification requirements that apply at the polling place in Arizona. Do not submit original documents, only copies.

If the federal form arrives and contains other acceptable HAVA identification, the information contained on the form is entered into the system.

- If there is a match on Name and address with the other forms of identification, the voter registration record is made active.
- If there is not a match on Name and address with the other forms, the record is placed in suspense and correspondence shall be sent to the registrant asking for information to correct the record.

**FEDERAL FORM VOTER PUT ON SUSPENSE
EARLY VOTING BY MAIL:**

- Voter calls in to request early ballot.
 - Voter not able to be flagged due to suspense status, each county will identify a single point of contact in the appropriate department.
- Voter completes a PEVL or singular early ballot request card, online request, or written request:
 - Voter not able to be flagged due to suspense status, information will be forwarded to a to the single point of

contact who will attempt to contact voter to remedy registration issues by telephone, email, or standard mail in the most expeditious manner provided by the voter's information.

- Appropriate staff will advise applicant of information necessary to complete processing. Staff shall expedite the processing of the information to ensure that the person receives an early ballot as soon as possible.
- Upon that remedy (provision of applicable number or information) once the voter is registered successfully they are enabled to vote by mail because they have provided necessary identification under HAVA.

FEDERAL FORM VOTER PUT ON SUSPENSE
EARLY VOTING IN PERSON:

- Voter presents themselves at an Early Voting location to vote.
- Voter not able to be flagged due to suspense status, Early Voting staff will be instructed to have voter vote a provisional ballot and obtain the necessary identification information following same process as at the polls on Election Day.
- In the processing of the provisional ballot voter registration staff routinely checks the suspense list which they will do for Early Ballots cast as well.
- During the provisional processing, staff will review the source code for the registration looking for Federal Forms &/or the affidavit image.

- If the voter has provided the necessary clarifying information on the provisional form they will be put on the voter registration file, their provisional accepted, and their ballot will move on for tabulation.

**FEDERAL FORM VOTER PUT ON SUSPENSE
GOES TO POLLS ON ELECTION DAY:**

- Voter will not appear in the signature roster due to suspense status, per standard procedure the voter will be instructed to vote a provisional ballot and board workers will obtain the necessary identification information :
 - ID: Provisional form will be circled “Yes”
 - NO ID: Provisional form will be circled “NO”—conditional provisional process applies.
- In the processing of the provisional ballot voter registration staff routinely checks the suspense list.
- During the provisional processing, staff will review the source code for the registration looking for federal forms &/or the affidavit image.
- If the voter has provided necessary clarifying information they will be put on the voter registration file, their provisional accepted, and their ballot will move on for tabulation.
- If the voter has not provided the necessary clarifying information and their registration issue cannot be resolved, then they will not be put on the voter registration file and their

provisional disposition will be “voter not registered”.

**FEDERAL FORMS; DISTRIBUTION AT
NATURALIZATION CEREMONIES**

County Recorder personnel who attend naturalization ceremonies may assist the new citizens in registering to vote. County Recorder personnel who bring copies of the State Form shall also bring copies of the Federal Form and must make either available to the applicant. If the applicant uses the Federal Form, county personnel shall bundle the registrations by county and send them to the County Recorder with an official cover letter.