

KRIS W. KOBACH
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4575
www.sos.ks.gov

STATE OF KANSAS

NEWS RELEASE

For Immediate Release

Wednesday, August 21, 2013

Contact Information

V. Kay Curtis, Public Affairs Director
Kansas Secretary of State
785-296-4580 | media@sos.ks.gov

KANSAS AND ARIZONA SUE ELECTION ASSISTANCE COMMISSION

TOPEKA (August 21, 2013) – Today the Kansas and Arizona secretaries of state, and each of their states, together filed a complaint against the United States Election Assistance Commission (EAC). The court case by the two states is the first of its kind.

The lawsuit seeks to compel EAC action that has been unlawfully withheld and unreasonably delayed. The complaint asks the court to order the EAC to modify the state-specific instructions on the National Mail Voter Registration Form (the Federal Form). Plaintiffs also seek a declaration from the court that a mere oath without concrete evidence of citizenship does not suffice to effectuate the Plaintiffs' state laws, and they request an order compelling the EAC to include this concrete evidence requirement on their state-specific instructions in the Federal Form.

The National Voter Registration Act (NVRA) requires the states to accept and use the Federal Form to register individuals to vote. The EAC maintains the Federal Form, including information necessary to enable the appropriate state election official to assess the eligibility of the applicant. All 50 states and the District of Columbia have state-specific instructions in the Federal Form.

Kansas first requested an update to its instructions in August 2012, pursuant to changes in Kansas election law requiring evidence of U.S. citizenship when registering to vote. The EAC took no action on the request because there were (and are) no EAC Commissioners to consider or approve such revision. Kansas renewed its request in June 2013, and the EAC staff deferred such request until the reestablishment of a quorum at the EAC.

In the U.S. Supreme Court case of *Arizona v. Inter Tribal Council of Arizona, Inc.*, the court specifically suggested this lawsuit saying: "Should the EAC's inaction persist, Arizona would have the opportunity to establish in a reviewing court that a mere oath will not suffice to effectuate its citizenship requirement and that the EAC is therefore under a nondiscretionary duty to include Arizona's concrete evidence requirement on the Federal Form."

“To refuse to modify the state-specific instructions of the Federal Form to conform with our states’ voter qualification and registration laws,” said Kansas Secretary of State Kris Kobach, “invades the province of state sovereignty reserved by the Tenth Amendment.”

Contrary to a commonly held misconception, the Supreme Court in *Arizona v. Inter Tribal Council of Arizona, Inc.* did not hold that a state may not require evidence of U.S. citizenship when registering to vote. Rather, the majority held that the NVRA “precludes Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself. Arizona may, however, request anew that the EAC include such a requirement among the Federal Form’s state-specific instructions, and may seek judicial review of the EAC’s decision under the Administrative Procedure Act.”

Kansas enacted the Secure and Fair Elections Act in 2011, which requires all newly-registered voters to provide proof of U.S. citizenship. The Supreme Court has spoken with respect to use of the Federal Form only, and with respect to federal elections only. Congress possesses no authority to regulate state elections. During the period that the lawsuit is pending, and until the EAC changes the Kansas-specific instructions to the Federal Form, the miniscule number of voters who use the Federal Form and fail to provide proof of citizenship will be permitted to vote in federal elections only. Those who use the Federal Form will be able to vote in federal, state and local elections if they submit a citizenship document before election day.

According to Kobach, “Kansas voters will be best served when the EAC amends the Kansas-specific instructions on the Federal Form to include submitting concrete evidence of U.S. citizenship when registering to vote.”

“We have requested the EAC make these changes to the federal form instructions because our laws require election officials to obtain information necessary to assess voter eligibility,” said Arizona Secretary of State Ken Bennett. “Currently, the federal form does not advise applicants to provide citizenship documents, in accordance with Arizona law. It is our hope and belief that a court will issue an order to force the EAC to change the federal form to reflect Arizona’s registration requirements.”