

[electionlineWeekly—April 3, 2008](#)

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I. In Focus This Week

Arizona Secretary of State prepares for legal action against the EAC

Proof of citizenship requirement remains controversial

By [Sean Greene](#)

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An unresolved debate at the federal [Election Assistance Commission](#) (EAC) over changing Arizona's instructions for the [federal mail-in voter registration form](#) has prompted [Secretary of State](#) Jan Brewer (R) to move forward with legal action against the federal agency.

The bipartisan commission has been split for months on whether to amend the state's instructions to include Arizona's 2004 requirement that voter registration applications include documents that indicate proof of citizenship.

Two weeks ago, at a meeting in Denver, the four EAC commissioners- two Democrats and two Republicans – [again deadlocked 2-2](#) along party lines on Arizona's request to make the change and a frustrated Brewer said she wants to move the debate to the courts. Minor changes to instructions in seven other states were approved at the same meeting.

"I have directed the Arizona Attorney General's office to prepare a legal filing for injunctive relief against the EAC," Brewer stated. "It is a sad day when a state is forced to sue the federal agency to compel that agency to do what is required of it under law."

The disagreement at the EAC stems from whether federal law and the National Voter Registration Act (NVRA) preempt state law when it comes to regulating the process for registering voters in federal elections, or whether the EAC is overstepping its bounds by not making changes concerning state-mandated voter eligibility requirements.

In a March 2006 [letter](#) to Brewer, Tom Wilkey, executive director at the EAC, stated that federal law preempted Arizona's in relation to the federal form.

Since then, the EAC commissioners have been divided on the issue with the two Republican members, vice chair Caroline Hunter and past chair Donetta Davidson, disagreeing with Wilkey's letter and their Democratic counterparts.

Hunter voted to approve Arizona's request at the recent meeting.

"The state instructions portion of the federal mail voter registration application should properly reflect the eligibility requirements for each state. Article 1 Section 2 and the Seventeenth Amendment of the Constitution reserve to the states the power to establish voter eligibility requirements," Hunter stated. "The EAC should properly reflect Arizona law unless and until the law is overturned by a court, the Arizona state legislature, or by vote of the citizens of Arizona."

Arizona's requirements relating to proof of citizenship have thus far withstood legal challenges. (The Ohio State University's Moritz College of Law has [detailed information](#) and links to court documents relevant to the ongoing case, *Gonzales v. Arizona*.)

EAC Chair Rosemary Rodriguez (D) voted against making the change.

“NVRA requires states to ‘accept and use the form’ and at least one court of appeals – the 11th Circuit – has held that the state must accept and use the form even where the state law differs from the federal law with regard to accepting the form. In other words, state law must bend to the NVRA,” she said.

While the EAC debate continues, hundreds of potential voters have not been registered because they have filed federal voter registration applications without proper proof of citizenship. Brewer lays the blame for this squarely on the federal agency.

“How ironic that the U.S. Election Assistance Commission’s inaction has directly led to hundreds of voter registration forms being rejected. Having even one voter disenfranchised due to government’s inaction is one too many, yet in this case we have over 200 such examples,” she said.

Helen Purcell, recorder for Maricopa County, the state’s most populous jurisdiction, reported that her office rejected 114 federal form applications in 2006 and 13 in 2007 for not providing the proper proof of citizenship. None have been rejected so far this year.

Michael Slater, deputy director of Project Vote which is a plaintiff in the lawsuit against Arizona, disagrees with Brewer’s premise.

“Brewer stands the question on its head — it is the state that is impeding its citizens’ rights to register by imposing requirements that are clearly prohibited by both the language and the legislative intent of the NVRA,” he said. “The reality is that documentary proof of citizenship requirements are a solution in search of a problem. The problem...is that, like ID requirements in general, it is most burdensome on low income and minority citizens.”

Slater pointed to the [legislative history of NVRA](#). When debating the bill in 1993, conferees removed an amendment added by the U.S. Senate that would have allowed states to require proof of citizenship, saying it wasn’t necessary or consistent with the legislation.

With potential legal action looming, Hunter hopes the commission can quickly resolve the issue and allow Arizona’s changes, although she sympathizes with Brewer’s position.

“I understand Secretary Brewer’s frustration with the EAC,” Hunter said. “I also understand why she believes that she has exhausted every option and may have to sue the EAC in order to have the form updated to reflect current Arizona state law.”

II. Election Reform News This Week

Students at the University of Montana could become the first in the nation to [able to register to vote automatically when they register for classes](#). A student association presented a proposal to university officials this week that would add an Internet widget – a project of [Rock the Vote](#) – to the class registration process that would also allow students to register to vote at the same time. “It struck me that UM would be a good testing ground, that this kind of thing has a great level of civic involvement and UM administration has been very supportive of that kind of thing in the past,” said Matt Singe, CEO of Forward Montana. According to *The Missoulian*, university officials are [cautiously optimistic](#) that the program will be feasible.

Iowa Gov. Chet Culver (D) this week signed legislation [approving \\$4.6 million in funding to create a statewide system of optical scan voting machines](#). Already in use in 80 of 99 counties, the governor, who was joined by Secretary of State Mike Mauro (D), said the law “will ensure Iowa voters have complete confidence in our voting process.” With all Iowans voting on the same equipment, “what constitutes a vote in one county constitute a vote in another county,” Mauro said in *The Gazette*.

[Control of New Jersey elections](#) moved from the Attorney General's office this week to the Secretary of State's office. Secretary of State Nina Mitchell Wells (D) told the *Star Ledger* she intends to coordinate closely with county officials who have raised concerns about voting machines after discrepancies were found in the Feb. 5 presidential primary election. The Department of State resumes control over elections after a decade under the Attorney General's Office based on legislation signed in January. "It will allow us to give a lot of time, attention and resources to elections," Wells said. "We want all our citizens engaged in the process." The Attorney General's Office will still provide legal advice to her department, Wells said. Within the next month, Wells said, she will name a new director to oversee the 20 employees in the division.

Looking to increase voter turnout, the Boston city council is [considering a proposal to move voting day from Tuesday to Saturday](#) as a way to boost participation in time for the 2009 mayoral election. Such a move would make it easier on working families to exercise their civic duty, the proposal's sponsor, Councilor John Tobin told *The Boston Globe*. But a voter advocate said that moving election day to the weekend could have little impact and that the real reason for the dismal 13.6 percent turnout in the November election was a lackluster race that failed to excite voters. A spokesman for Secretary of State William F. Galvin (D), who oversees the city elections, did not comment on the idea.

III. Opinion This Week

National: [Election reform](#)
Colorado: [Paper ballots](#)
Connecticut: [Voter ID](#)
Florida: [Voting system](#)
Indiana: [Voter ID](#); [Voter registration](#)
Iowa: [Voting system](#)
Mississippi: [Voter ID, II](#); [Wilkinson County](#)
New Jersey: [Motor voter, II](#)
North Dakota: [Vote centers](#)
Ohio: [Jennifer Brunner](#); [Primary election](#)
Texas: [Voter fraud](#)

***some sites require registration*

IV. Job Postings This Week

All job listings must be received by 12 p.m. Eastern on Wednesday for publication in our Thursday newsletter. Job listings are free but may be edited for length. Whenever possible, include Internet information. Please email job postings to mmoretti@electionline.org