U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

OFFICE OF THE CHAIRMAN

BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of	)
	)
Arizona Request for Accommodation	)
	)

CERTIFICATION

I, Paul S. DeGregorio, Chairman of the U.S. Election Assistance Commission, do hereby certify that on July 11, 2006, the Commissioners voted on the above referenced matter. This matter proposed that the Commission accommodate Arizona's proof of citizenship procedure by amending the state specific portion of the Federal Voter Registration Form. The matter also proposed a letter to communicate this decision to the state. All ballots were timely submitted.

After review of the ballots, I certify that the measure fails, having not achieved the requisite 3 votes required by law. Commissioners Davidson and DeGregorio voted affirmatively, and Commissioners Martinez and Hillman objected.

Attest:

July 31, 2006
Date

Paul DeGregorio
Paul S. DeGregorio
Chairman

Tel: (202) 566-3100 www.eac.gov Fax: (202) 566-3189
Toll free: 1 (866) 747-1471

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: July 6, 2006, 5:00 p.m.

BALLOT DEADLINE: July 10, 2006, 7:00 p.m. (time extention)

COMMISSIONERS: DAVIDSON, DEGREGORIO, HILLMAN, MARTINEZ

SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

(✓) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: _____

DATE: July 10, 2006 SIGNATURE: Paul DeGregorio
Signed by Amie Sherrill

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

U.S. ELECTION ASSISTANCE COMMISSION
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Washington, DC 20005

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SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

( ) I approve the recommendation.

(✓) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: Please see Position Statement

DATE: 7/11/06 SIGNATURE: Ray Martinez III

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

U.S. ELECTION ASSISTANCE COMMISSION
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SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

(✓) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: _____

DATE: 7/7/06 SIGNATURE: _____

E Collver for Commissioner Davidson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM PAUL DEGREGORIO, CHAIRMAN

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

TALLY VOTE MATTER

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COMMISSIONERS: DAVIDSON, DEGREGORIO, HILLMAN, MARTINEZ

SUBJECT: ARIZONA'S REQUEST FOR ACCOMMODATION

( ) I approve the recommendation.

(✓) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: The attached memo is an integral part of my response to this Tally Vote.

DATE: 11 July 2006 SIGNATURE: [signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

July 6, 2006

MEMORANDUM

TO: EAC Commissioners

FROM: Paul S. DeGregorio, Chairman PSD (DeAnna Smith signing for Chairman DeGregorio)
U.S. Election Assistance Commission

SUBJECT: Arizona's Request for Accommodation

On June 20, 2006, the Arizona Secretary of State, Jan Brewer, forwarded a letter to my office (attached) requesting that the EAC change Arizona's state specific instructions on the Federal Voter Registration Form to incorporate the state's additional proof of citizenship procedures. This letter was sent following a U.S. District Court's decision denying a request for a Temporary Restraining Order filed to prevent enforcement of the proof of citizenship requirement (Proposition 200).

As you know, the EAC has previously refused Arizona's request to amend the Federal Form's state specific instructions. However, at present, that prior determination, the preliminary determination of the Court, and Arizona's position regarding the Federal Form have created significant confusion for the Arizona voters. Given this fact and our shared desire not to allow this confusion to disenfranchise Arizona voters, I recommend that we amend the Federal Form's state specific instructions to accommodate Arizona's proof citizenship procedure. To this end, I have attached a letter for your consideration. This letter communicates (1) the EAC decision to change to the Federal Form, and (2) its position regarding Federal authority over the Federal Registration Form.

RECOMMENDATIONS:

(1) Approve, via tally vote, the accommodation of Arizona's proof of citizenship procedure by amending the state specific portion of the Federal Voter Registration Form; and

(2) Review and approve, via tally vote, the attached letter to communicate the decision.

The Honorable Jan Brewer
Arizona Secretary of State
1700 West Washington Street, 7th Floor
Phoenix, AZ 85007-2888

Secretary Brewer,

This letter responds to your correspondence of June 20, 2006, in which you requested that the U.S. Election Assistance Commission ("EAC") change Arizona's state specific instructions on the Federal Voter Registration Form to incorporate the state's additional proof of citizenship procedures. You have made this request in light of a recent U.S. District Court decision on a Temporary Restraining Order (Gonzalez v. State of Arizona, No. CV 06-1268-PHX-ROS). Ultimately, this preliminary decision has raised considerable confusion regarding Arizona's registration process. As such, the EAC is persuaded by your request to stem this confusion and prevent the potential disenfranchisement of Arizona voters. To this end, the EAC will amend the Federal Form to accommodate Arizona's proof of citizenship procedure.

The EAC reviewed the Court's opinion referenced in your letter. Unfortunately, its application to the Federal regulation of voter registration under the National Voter Registration Act is unclear. The judge's opinion ultimately concluded only that Proposition 200 does not "conflict with a plain language reading of the NVRA." A conclusion which the EAC does not and has not challenged.[1] While the court clearly stated that the NVRA sets the "floor" regarding voter registration in Federal elections, it failed to discuss the impact of Federal regulatory action. The NVRA allows for the use of two forms to be used in voter registration, a state form and a Federal form. While the state may determine the requirements of its voter registration form (consistent with the minimum requirements of the NVRA), the EAC determines the requirements of the Federal Form. This form must be accepted and used by states. Ultimately, the Court's opinion did not address the significance of specific action taken by a Federal Regulatory Agency in the creation of the Federal Form. To address this confusion, the EAC has decided to make its issuance of Federal regulations regarding the NVRA's Federal Form a priority. The EAC is required to prescribe such regulation pursuant to the NVRA (42 U.S.C. 1973gg-7).

EAC staff will contact your office promptly to coordinate the changes to Arizona's state specific instructions on the Federal Form. Your cooperation in this matter is appreciated. If you have any questions or concerns regarding the above, please contact the undersigned.

Sincerely,

Paul S. DeGregorio
Chair

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[1] In fact, in the original March 6, 2006 letter to your office, the EAC clearly stated that Arizona may apply Proposition 200 citizenship requirements to its state form as long as it did so in a manner that met the minimum requirements of the NVRA.

DRAFT