

ARIZONA v. ITCA

VOTER REGISTRATION AND PROOF OF CITIZENSHIP AFTER SUPREME COURT'S RULING IN *ARIZONA v. ITCA*

On June 17, 2013, the U.S. Supreme Court delivered a strong victory for voting rights in its decision in Arizona v. Inter Tribal Council of Arizona, Inc. ("ITCA"). The Court ruled that the National Voter Registration Act of 1993 ("NVRA") prohibits Arizona from requiring that individuals who apply to register to vote using the NVRA's mail-in registration form ("Federal Form") provide additional proof of citizenship in order to register. In so doing, the Court reaffirmed the importance of ensuring Americans' access to voter registration.

The Lawyers' Committee represents plaintiffs in ITCA, who include: the Inter Tribal Council of Arizona, the Arizona Advocacy Network, the League of United Latin American Citizens Arizona, the League of Women Voters of Arizona, the Hopi Tribe, and State Senator Steve Gallardo. Another group of plaintiffs, represented by the Mexican American Legal Defense and Educational Fund, brought a similar lawsuit challenging the proof-of-citizenship provision.

What is *ITCA* about?

In a nutshell, *ITCA* is a case about interpreting a law enacted by Congress. The NVRA requires that States "accept and use" the Federal Form issued by the federal Election Assistance Commission ("EAC"). The Federal Form provides that registration applicants sign the Form under penalty of perjury affirming their U.S. citizenship. The Form does not require that any further documentation of citizenship be included.

In 2004, Arizona passed Proposition 200 requiring that all persons registering to vote, including those using the Federal Form, provide documentary evidence of U.S. citizenship. For some Arizona residents, the required evidence could be their Arizona driver's license number, while others are required to submit a document such as a certificate of naturalization, U.S. passport, or birth certificate. Thus, the Proposition 200 "proof of citizenship" is significantly more than what is provided by the Federal Form.

In 2006, the Lawyers' Committee for Civil Rights Under Law, with co-counsel, filed the *ITCA* lawsuit arguing, among other things, that Proposition 200 violates the NVRA's mandate that States "accept and use" the Federal Form.

What was the impact of Proposition 200?

Proposition 200 creates the type of cumbersome, confusing, and unnecessary registration procedure that Congress sought to eliminate when it enacted the NVRA. From 2005 to 2008 (when trial was conducted in *ITCA*), at least 31,000 registration applications were rejected in Arizona because they did not meet the requirements of Proposition 200.

What are the benefits of using the Federal Form and why is the Federal Form important for registering traditionally disenfranchised communities?

Voter registration drives are easier when the Federal Form is used. The Federal Form allows civic engagement groups to reach and register voters at grocery stores, shopping malls, and other public spaces. In these locations, individuals need only fill-in the Form, and mail the Form to the local registrar. When individuals congregate in and pass through various public spaces, they do not typically carry with them any proof of citizenship, such as a birth certificate or passport.

Having the Federal Form readily available means that there will always be a way to register to vote even if a State or county does not provide adequate voter registration forms or in-person registration opportunities for heavily-minority, poor, or other traditionally disenfranchised communities.

What did the Supreme Court say in *ITCA*?

The Supreme Court ruled that the NVRA prevents Arizona from requiring that Federal Form applicants submit information beyond that required by the Form itself. The NVRA was enacted pursuant to the authority granted Congress, by the Elections Clause of the U.S. Constitution, to determine the procedures governing the Time, Place, and Manner of holding congressional elections. A plain reading of the NVRA's text led the Court to conclude that Proposition 200's proof-of-citizenship requirement conflicts with the NVRA's mandate that States "accept and use" the Federal Form as designed by the EAC.

What other states have laws that require additional proof of citizenship for voter registration and what does the Supreme Court's decision mean for States?

Three other States (Alabama, Georgia and Kansas) have adopted "proof of citizenship" voter registration requirements that resemble Arizona's. Kansas began implementing its law this year, while Alabama and Georgia have not yet implemented their laws.

Unless the EAC decides otherwise, States cannot reject a voter registration application submitted on the Federal Form because the applicant fails to submit additional proof of citizenship beyond what is required on the Federal Form. On the Federal Form, a voter attests to his or her citizenship status by simply signing under oath to affirm that he or she is a U.S. citizen. Eligible citizens throughout the United States typically can register to vote either by using a registration form issued by their State, or the Federal Form issued by the federal government. While State registration forms might include different requirements to prove citizenship, when an applicant opts to register with the **Federal Form**, that voter must only comply with the requirements set out on that form.

What if the voter wishes to register using a State form?

The *ITCA* decision did not address the requirements included in State voter registration forms. If a voter chooses to apply to register using a State form, the voter should comply with the requirements set out on the State form, even if one of these requirements is that documentary proof of citizenship be provided.

Where can I find the Federal Form?

States must make the Federal Form available. The NVRA requires that States make the Federal Form available by, for example, posting it on the website of the State's chief election official, distributing Federal Forms to civic engagement groups, and making them available at government offices (such as motor vehicle offices, public assistance and disability services offices, and the offices of local registrars). The Form also is available on the U.S. Election Assistance Commission's website.

Who should I contact if I encounter problems while registering with the Federal Form?

If you have any questions regarding the voter registration process or if you used the Federal Form and your voter registration application was rejected because you did not provide additional proof of citizenship, please contact the **Election Protection Hotline at 1-866-OUR-VOTE (1-866-687-8683)**.