

Background on Voter Roll Bifurcation

During the 87th Regular Legislative Session, Texas Republicans filed bills that would create separate voter registration systems for federal races and for state and local races. H.B. 4507 (Schofield) and H.B. 4366 (Jetton) were identical bills that “split the voter rolls,” or “bifurcated” voter registration in the state.

Under either bill, the Texas Secretary of State would be required to create a federal election voter registration system that complies with federal election law. Those voters who register to vote under this system would only be eligible to vote in federal elections, with their voter registration certificates denoting the phrase “Valid for federal elections only.” To be eligible to vote in state and local races, eligible voters would be required to register under a separate state registration system that would likely impose registration requirements on top of federal law. The SOS would potentially have to change elections dates and deadlines so that federal races and state and local races do not coincide—depending on the nature and scope of the differences.

There is precedent among states that have successfully bifurcated voter rolls or attempted to bifurcate voter rolls. Most notably, Arizona has a bifurcated voter registration system currently in place, although legal challenges have chipped away at the differences between the federal system and the state and local system. Kansas fought during the first half of the 2010s to bifurcate its voter rolls, but state courts finally ruled in 2016 that a bifurcated voter registration system violates Kansas election law.

While Alabama and Georgia have not bifurcated their voter registration rolls, both states have passed, but not implemented, legislation that imposes voter registration requirements in direct conflict with federal law. It remains to be seen whether either state will follow the model of Arizona and Kansas, who chose to pursue voter roll bifurcation after having similar conflicting voter registration requirements struck down by the courts.

Proof of Citizenship and Bifurcation

The overwhelming reason states have considered voter roll bifurcation is that federal and state courts have consistently ruled against proof of citizenship requirements for voter registration. Arizona, Kansas, Georgia, and Alabama have each passed legislation, at varying degrees of enforcement and implementation, that require voters to provide documented proof of their citizenship status in order to be eligible to vote in federal, state, and local races. **Table 1** is a timeline of the efforts by these states to enact, and the associated legal challenges against, proof of citizenship requirements and subsequent bifurcation pushes.

In summary, these states have attempted to pass proof of citizenship requirements under the reasoning that such requirements protect “the integrity of the election process” and ensure “votes will not be diluted by non-citizens,” as then-Arizona Attorney General Tom Horne said in 2011.¹ In response, courts have overwhelmingly struck down proof of citizenship requirements on the grounds that federal election law, as laid out by the National Voter Registration Act of 1993 (NVRA), makes such requirements unnecessary and burdensome.² Specifically, the NVRA *preempts* any state-led effort to require proof of citizenship in voter registration because the NVRA already requires applicants to attest that they are citizens of the United States on the voter registration form. **Appendix 1** summarizes how the NVRA determines citizenship requirements in voter registration.

For Arizona and Kansas, voter roll bifurcation has been the solution to this conflict. In 2004, Arizona residents passed Proposition 200, or the “Arizona Taxpayer and Citizen Protection Act,” which required all Arizonans to provide physical copies of proof of citizenship to register to vote in all elections, among other provisions.³ Parties including the League of Women Voters sued the state, resulting in a final decision on the matter by Supreme Court of the United States in *Arizona v. Intertribal Council of Arizona (ITCA)* (2013). In *ITCA*, the Supreme Court ruled that Arizona’s proof of citizenship requirements are preempted by the NVRA.⁴

Following SCOTUS’s ruling in *ITCA*, Arizona’s Attorney General issued a ruling in 2013 that Arizona law does not prohibit a bifurcated voter registration system, wherein voters must submit proof of citizenship to “vote in state and local elections and to sign candidate, initiative, referendum, or recall petitions.”⁵ The Arizona Secretary of State published guidance for and enforced a bifurcated voter registration system beginning in 2014, with proof of citizenship required to register to vote in state and local elections.⁶

¹ https://web.archive.org/web/20110930142035/http://www.azag.gov/press_releases/june/2011/citizenship%20to%20vote%206-21-11.html

² <https://lawprofessors.typepad.com/files/08-17094-arizonavotercitizenship.pdf>

³ [https://ballotpedia.org/Arizona_Taxpayer_and_Citizen_Protection,_Proposition_200_\(2004\)](https://ballotpedia.org/Arizona_Taxpayer_and_Citizen_Protection,_Proposition_200_(2004))

⁴ https://www.supremecourt.gov/opinions/12pdf/12-71_7148.pdf

⁵ <https://www.azag.gov/opinions/i13-011-r13-016>

⁶ https://azsos.gov/sites/default/files/election_procedure_manual_2014.pdf

This system remained in place until 2018, when a settlement was reached in *LULAC v. Reagan (2017)*, which was heard in the U.S. District Court for the District of Arizona, that required the Arizona Secretary of State to accept all voter registration applications for federal elections. For voters who do not provide proof of citizenship, the SOS must coordinate with the Motor Vehicles Division (MVD) to check citizenship status, with some exceptions, in order to determine eligibility for state and local elections.⁷

Kansas is the only other state to pursue bifurcation. In 2011, the Kansas State Legislature passed H.B. 2067, an omnibus election bill that required voters to provide proof of citizenship in order to vote in federal, state, and local elections, among other provisions.⁸ This proof of citizenship requirement became active in 2013. Following this, and in response to the Supreme Court's ruling in *ITCA*, Kansas Secretary of State Kris Kobach unilaterally declared later in 2013 that Kansas would employ a bifurcated voter registration system wherein voters must provide proof of citizenship to register to vote in only state and local elections.⁹

In 2015, the District Court of Shawnee County, Kansas ruled in *Belenky v. Kobach (2013)* that Kansas SOS Kris Kobach had no "legislative authority" to create a bifurcated voter registration system.¹⁰ This ruling was later reiterated in *Brown v. Kobach (2016)*, when the same District Court permanently prohibited Kobach from creating a bifurcated voter registration system on the grounds that he "simply lacks the authority to create a two-tiered system of voter registration."¹¹ There have been no successful attempts to create a bifurcated voter registration system in Kansas since then.

⁷ <https://campaignlegal.org/sites/default/files/Consent%20Decree.pdf>

⁸ https://www.kssos.org/other/news_releases/PR_2011/PR_2011-04-18_on_SAFE_Act_Signing.pdf

⁹ <https://www.aclu.org/legal-document/belenky-v-kobach-petition>

¹⁰ <https://www.aclu.org/legal-document/belenky-v-kobach-defendant-summary-judgment-motion-denied>

¹¹ <https://www.aclu.org/legal-document/brown-v-kobach-memorandum-decision-and-order>

Legal Avenues at the State Level

Through Arizona and Kansas's efforts, courts have indicated possible paths forward for states seeking to bifurcate voter rolls or impose voter registration requirements on top of federal law. Specifically, in *Gonzalez v. Arizona* (2012), the U.S. Ninth Circuit Court of Appeals permitted that “the [National Voter Registration Act of 1993] allows Arizona to include a proof of citizenship requirement on its State Form,” but this “would not mean that Arizona has authority to add this requirement to the Federal Form.”¹²

Additionally, courts have recognized that voter registration requirements in state and local elections fall under the legal purview of state courts and are not necessarily preempted by the NVRA. In *Kobach v. U.S. Election Assistance Commission* (2014), the U.S. Tenth Circuit Court of Appeals stated that “the NVRA does not require preclearance of state election laws. The NVRA therefore leaves Arizona and Kansas free to choose whether to impose a documentary evidence of citizenship requirement on voters in state elections.” Therefore, it is up to an individual state's statutes and courts to determine whether voter registration requirements such as proof of citizenship are legal for state elections.¹³

¹² <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/04/17/08-17094.pdf>

¹³ <https://casetext.com/case/kobach-v-us-election-assistance-commn-7>

Texas and the Cost of Bifurcation

Texas does not currently require voters to provide proof of citizenship for voter registration, but other states' efforts provide a possible blueprint to follow, as well as common hurdles to avoid, should Texas pursue voter roll bifurcation toward this end.¹⁴ In fact, Texas Attorney General Ken Paxton has joined legal efforts by other states' attorneys general in support of proof of citizenship requirements in the past.¹⁵

Under a bifurcated voter registration system, there are likely to be additional costs to both the state and to counties, which are most often the entities responsible for administering Texas' elections. The official fiscal note for H.B. 4507 (Schofield) as provided by the Legislative Budget Board could not determine the fiscal implications of voter roll bifurcation without knowing exactly how the federal and state systems would differ.¹⁶ However, we can estimate the following costs at the state level and county level:

*State Level*¹⁷

- The cost of running separate primaries for each election system is likely to be between \$15,000,000 and \$18,000,000
- Annual updates to the Texas Election Administration Management (TEAM) system used to collect and gather voter registration documents in the state, are likely to be roughly \$500,000
- Depending on any changes to state election law, there would probably be added costs associated with meeting new voter registration requirements

County Level

- The anticipated costs of running separate elections could double costs for individual counties, especially so for the elections held in even-numbered years—Williamson County, a midsize county, places these costs at roughly \$2.2 million¹⁸
- If separate elections have to be held, counties could face hard costs such as purchasing additional election equipment to facilitate

¹⁴ <https://texasscorecard.com/state/state-still-cant-require-voters-to-prove-citizenship-federal-court-rules/>

¹⁵ <https://law.justia.com/cases/federal/appellate-courts/ca10/18-3133/18-3133-2020-04-29.html>

¹⁶ <https://capitol.texas.gov/tlodocs/87R/fiscalnotes/pdf/HB04507I.pdf#navpanes=0>

¹⁷ Per 6/24/21 meeting with the Secretary of State's office

¹⁸ Chris Davis, Elections Administrator, Williamson County, Texas

Conclusion

Texas Republicans have shown an interest in voter roll bifurcation, or the splitting of voter rolls between federal elections and state and local elections. It is likely that Texas Republicans' push to file bifurcation bills, most recently with H.B. 4507 (Schofield), is to prepare for possible federal voting rights expansions such as H.B. 1, or the "For The People Act."¹⁹ According to Rep. Schofield, H.B. 4507 simply specifies that Texas is in charge of its own elections. Or, as he told an April 14th meeting of the House State Affairs Committee: "Congress has the right to set the time, place, and manner of their elections, but not for ours."²⁰

Precedent from other states indicates that bifurcation is a necessary step for states looking to require proof of citizenship requirements in voter registration. While federal courts have consistently ruled that proof of citizenship requirements violate the National Voter Registration Act of 1993 (NVRA), the U.S. Tenth Circuit Court of Appeals has specified that this prohibition only applies to federal elections. In a 2014 court case, the Tenth Circuit stated that voter registration requirements in *state* elections are up to the determination of *state* courts and statutes. Arizona's and Kansas's pursuits of voter roll bifurcation, albeit to varying degrees of success, seem to recognize this exception.

Still, it is not clear how Texas Republicans will choose to proceed with voter roll bifurcation. Nor is it clear what the impact of bifurcation will be on Texas elections and voter registration. If a bill like H.B. 4507 is signed by the Governor, there is likely to be a considerable fiscal impact to the state and to counties in order to administer new voter rolls, separate elections, and all associated maintenance. But the extent of this impact will not be clear until such legislation becomes law.

In addition to the fiscal implications, voter roll bifurcation and separating federal elections from state and local elections in Texas will undoubtedly contribute to misinformation and voter confusion. The inevitable byproducts of that are increased barrier to voter participation and lower voter participation. Texas is already the hardest state to vote in the country, ranking 50th for ease of voting, according to the *Cost of Voting in the American States: 2020*.²¹ Bifurcation of the voter rolls and Texas' elections would only serve to exacerbate this further.

¹⁹ <https://www.mic.com/p/texas-republicans-are-plotting-to-create-a-two-tier-election-disenfranchisement-system-73381622>

²⁰ https://tlchouse.granicus.com/MediaPlayer.php?view_id=46&clip_id=20318

²¹ <https://www.liebertpub.com/doi/pdf/10.1089/elj.2020.0666>

Table 1: Timeline of State Bifurcation Efforts and Legal Challenges

Date	State(s)	Action(s)
February 1995	Mississippi	In response to the passage of the National Voter Registration Act of 1993 (NVRA), which requires states to simplify voter registration procedures in federal elections, Mississippi bifurcates its voter registration. ²²
March 1997	Mississippi	In <i>Young v. Fordice (1997)</i> , SCOTUS tosses out Mississippi’s bifurcated voter registration system, on the grounds that Mississippi’s plan must first pass preclearance as required by the Voting Rights Act. ²³
November 2004	Arizona	<p>Arizona residents pass Proposition 200, or the “Arizona Taxpayer and Citizen Protection Act,” 56% to 44%. Proposition 200 requires that all Arizonans must provide physical copies of proof of citizenship to register to vote in all elections, among other provisions.²⁴</p> <p>The new law is initially approved under the preclearance provision of the Voting Rights Act by President George W. Bush’s Department of Justice.²⁵</p>
October 2006	Arizona	<p>A month before the first election to take place in Arizona under the new citizenship requirements, the U.S. Ninth Circuit Court of Appeals suspends the citizenship requirements enacted by Proposition 200.</p> <p>Two weeks later, in <i>Purcell v. Gonzalez (2006)</i>, SCOTUS issues a stay on the Court of Appeals’ ruling on the grounds that “the Court of Appeals offered no explanation or justification for its order.”²⁶ As a result of SCOTUS’s ruling, Arizona can continue to require proof of citizenship in voter registration.</p>

²² <https://www.oyez.org/cases/1996/95-2031>

²³ <https://supreme.justia.com/cases/federal/us/520/273/>

²⁴ [https://ballotpedia.org/Arizona_Taxpayer_and_Citizen_Protection,_Proposition_200_\(2004\)](https://ballotpedia.org/Arizona_Taxpayer_and_Citizen_Protection,_Proposition_200_(2004))

²⁵ <https://www.facingsouth.org/2009/05/georgia-becomes-2nd-state-to-require-proof-of-citizenship-to-vote.html>

²⁶ <https://www.supremecourt.gov/opinions/06pdf/06A375.pdf>

January 2009	Georgia	The Georgia State Assembly passes S.B. 86, which requires voters to provide proof of citizenship when registering to vote. ²⁷ However, this law is not implemented. ²⁸
October 2010	Arizona	In <i>Gonzales v. Arizona (2010)</i> , a follow-up effort to <i>Purcell v. Gonzalez (2006)</i> on behalf of plaintiffs including the Intertribal Council of Arizona and the League of Women Voters, the Ninth Circuit Court of Appeals preempts Arizona’s citizenship requirements based on the NVRA. ²⁹ In other words, proof of citizenship for voter registration is not determined to be necessary given that the NVRA already requires applicants to attest that they are citizens of the United States on the voter registration form. ³⁰
2011	Alabama	Alabama passes a law similar to S.B. 86 in Georgia, which requires voters to provide proof of citizenship when registering to vote. ³¹ Like Georgia, Alabama does not implement its law, possibly believing it will not pass the preclearance requirements of the Voting Rights Act as determined by the Obama administration’s Department of Justice. ³²
April 2011	Arizona, Kansas	Arizona petitions the Ninth Circuit Court of Appeals’ ruling in <i>Gonzales v. Arizona (2010)</i> against the citizenship requirements. ³³ Then-Arizona Attorney General Tom Horne argues that citizenship requirements will ensure that “Arizona voters will not have their votes diluted by non-citizens.” The Kansas State Legislature passes H.B. 2067, an omnibus election bill that requires voters to submit proof of citizenship in order to vote in federal, state, and local races. ³⁴ This provision is scheduled to become active on January 1, 2013.

²⁷ <https://legiscan.com/GA/text/SB86/id/442358>

²⁸ <https://www.brennancenter.org/our-work/court-cases/league-women-voters-v-newby>

²⁹ <https://lawprofessors.typepad.com/files/08-17094-arizonavotercitizenship.pdf>

³⁰ <https://www.cga.ct.gov/2016/rpt/2016-R-0323.htm>

³¹ Relevant Alabama election law is under Section 31-13-28 on “Voter registration eligibility and requirements”:

<https://law.justia.com/codes/alabama/2012/title-31/chapter-13/section-31-13-28>

³² <https://www.brennancenter.org/our-work/court-cases/league-women-voters-v-newby>

³³ https://web.archive.org/web/20110930142035/http://www.azag.gov/press_releases/june/2011/citizenship%20to%20vote%206-21-11.html

³⁴ https://www.kssos.org/other/news_releases/PR_2011/PR_2011-04-18_on_SAFE_Act_Signing.pdf

April 2012	Arizona	<p>In <i>Gonzalez v. Arizona (2012)</i>, the Ninth Circuit Court of Appeals upholds its October 2010 ruling.³⁵ Arizona’s citizenship requirements are preempted by the NVRA.</p> <p>The Ninth Circuit Court’s majority opinion does state, however, that “the NVRA allows Arizona to include a proof of citizenship requirement on its State Form,” but this “would not mean that Arizona has authority to add this requirement to the Federal Form.”</p>
June 2012	Arizona	<p>SCOTUS denies a stay in <i>Gonzalez v. Arizona (2012)</i>.³⁶ Arizona’s citizenship requirements are preempted by the NVRA.</p>
July 2012	Arizona	<p>Arizona submits a writ of certiorari petition in opposition to the Ninth Circuit Court of Appeals’ ruling in <i>Gonzalez v. Arizona (2012)</i> that the NVRA preempts Arizona’s citizenship requirements.³⁷</p>
June 2013	Arizona	<p>In <i>Arizona v. Intertribal Council of Arizona (ITCA) (2013)</i>, SCOTUS rules 7-2 that Arizona’s proof of citizenship requirements are preempted by the NVRA.³⁸ Under the Elections Clause, Congress has the power to preempt state laws concerning when, where, and how federal elections are held, including registration procedures.³⁹</p> <p>If Arizona wants to require proof of citizenship, they may petition the Election Assistance Commission (EAC) to add this information to their Federal Form. Following that, Arizona could seek judicial review under the federal Administrative Procedure Act 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.”</p>

³⁵ <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/04/17/08-17094.pdf>

³⁶ <https://www.supremecourt.gov/orders/courtorders/062812zr.pdf>

³⁷ <http://sblog.s3.amazonaws.com/wp-content/uploads/2012/08/12-71-Gonzalez-S-Ct-Pet-for-Cert-2012.pdf>

³⁸ https://www.supremecourt.gov/opinions/12pdf/12-71_7148.pdf

³⁹ <https://www.cga.ct.gov/2016/rpt/2016-R-0323.htm>

July 2013	Kansas	Following the passage and effective date of H.B. 2067 on January 1, 2013, and SCOTUS’s ruling in <i>Arizona v. ITCA (2013)</i> , Kansas Secretary of State Kris Kobach provides guidance that Kansas will employ a bifurcated voter registration system wherein voters must provide proof of citizenship to register to vote in state and local elections. ⁴⁰ Voters are otherwise eligible to vote in federal races without proof of citizenship.
October 2013	Arizona	Following SCOTUS’s ruling in <i>Arizona v. ITCA (2013)</i> , Arizona’s Attorney General issues a ruling that Arizona law does not prohibit a bifurcated voter registration system, wherein voters must submit proof of citizenship to “vote in state and local elections and to sign candidate, initiative, referendum, or recall petitions.” ⁴¹
November 2013	Kansas	In <i>Belenky v. Kobach (2013)</i> , the ACLU challenges Kansas’s bifurcated voter registration system on the grounds that it violates state law and disenfranchises Kansas voters. ⁴²
January 2014	Arizona, Kansas, Georgia	The Election Assistance Commission (EAC) denies petitions by Arizona, Georgia, and Kansas requesting that proof of citizenship be required to vote in federal elections. ⁴³ EAC cites the following reasons for denying the petitions: <ul style="list-style-type: none"> ● When deliberating on the NVRA prior to its passage in 1993, Congress already determined that a proof of citizenship requirement was unnecessary, inconsistent, and burdensome ● EAC has determined in the past that an oath of citizenship under penalty of perjury is sufficient for a voter registration applicant to prove citizenship; therefore, to permit these states’ requests contradicts prior guidance ● EAC already denied nearly the exact same request from Arizona in 2005, and these new requests fail to

⁴⁰ <https://www.aclu.org/legal-document/belenky-v-kobach-petition>

⁴¹ <https://www.azag.gov/opinions/i13-011-r13-016>

⁴² <https://www.aclu.org/legal-document/belenky-v-kobach-petition>

⁴³

https://www.eac.gov/sites/default/files/eac_assets/1/28/20140117%20EAC%20Final%20Decision%20on%20Proof%20of%20Citizenship%20Requests%20-%20FINAL.pdf

		<p>offer a more compelling case than the one previously denied</p> <ul style="list-style-type: none"> ● SCOTUS’s decision in <i>Arizona v. ITCA (2013)</i> makes it clear that the NVRA preempts state election law, so EAC is only obligated to grant the states’ requests if it determines that it is necessary to do so for states to enforce voter qualification requirements ● The states in question failed to present evidence that noncitizen voting is seen at a level any higher than human error would suggest ● States already have multiple means of assessing a voter’s citizenship that do not require voters to submit forms while registering to vote, such as during criminal prosecution investigations, while coordinating with other state agencies as needed during REAL ID verification -- for example, during the oath made in jury service -- through the U.S. Citizenship and Immigration Services database, and using the National Association for Public Health Statistics and Information Systems birth records database ● The citizenship requirements would undermine the goal of the NVRA to increase the number of eligible citizens who register to vote in federal races and would hurt organized voter registration efforts ● This request for proof of citizenship is not comparable to Louisiana’s approved request in 2012 to adjust its requirements on the Federal Form, which involved identification requirements already accounted for under HAVA ● A decision made under the Federal Voting Assistance Program in support of Arizona’s Prop 200 has no bearing on the NVRA; and ● EAC’s regulatory authority does not mean it must consider a state’s request to change the Federal Form for the purpose of state and local elections.
June 2014	Arizona	In response to the Arizona Attorney General’s ruling that Arizona law does not prohibit a bifurcated voter registration

		system, the Arizona SOS publishes rules and guidance for the bifurcated voter registration system going forward. ⁴⁴
November 2014	Arizona, Kansas	<p>In <i>Kobach v. U.S. Election Assistance Commission (2014)</i>, Arizona and Kansas challenge EAC’s ruling and seek judicial review through the Administrative Procedure Act.⁴⁵ The case makes it to the U.S. Tenth Circuit Court of Appeals, who denies the appeal on the grounds that <i>Arizona v. ITCA (2013)</i> already decided the issue and that neither state has demonstrated sufficient evidence of fraud in the absence of proof of citizenship requirements.</p> <p>However, the Tenth Circuit Court states: “the NVRA does not require preclearance of state election laws. The NVRA therefore leaves Arizona and Kansas free to choose whether to impose a documentary evidence of citizenship requirement on voters in state elections.” In other words, it is up to an individual state’s statutes and courts to determine whether requirements such as proof of citizenship are legal for state elections.</p>
June 2015	Arizona, Kansas	SCOTUS denies writ of certiorari petitions from Arizona and Kansas to hear <i>Kobach v. U.S. Election Assistance Commission (2014)</i> . The Tenth Circuit Court of Appeals’ ruling that a state may not require proof of citizenship documents on the Federal Form stands. ⁴⁶
August 2015	Kansas	The District Court of Shawnee County, Kansas rules in <i>Belenky v. Kobach (2013)</i> that Kansas SOS Kris Kobach had no “legislative authority” to create a bifurcated voter registration system. ⁴⁷
January 2016	Alabama, Kansas, Georgia	The Election Assistance Commission, under new Executive Director Brian Newby, reverses on prior guidance and approves proof of citizenship requirements for Alabama, Kansas, and Georgia. ⁴⁸ Newby does not offer specific reasoning for approving the states’ requests.

⁴⁴ https://azsos.gov/sites/default/files/election_procedure_manual_2014.pdf

⁴⁵ <https://casetext.com/case/kobach-v-us-election-assistance-commn-7>

⁴⁶ <https://www.brennancenter.org/our-work/court-cases/league-women-voters-v-newby>

⁴⁷ <https://www.aclu.org/legal-document/belenky-v-kobach-defendant-summary-judgment-motion-denied>

⁴⁸ <https://www.brennancenter.org/our-work/court-cases/league-women-voters-v-newby>

		The Kansas District Court reiterates its ruling in <i>Belenky v. Kobach (2013)</i> that Kansas SOS Kris Kobach had no “legislative authority” to create a bifurcated voter registration system. ⁴⁹
June 2016	Kansas	A Kansas District Court denies Kansas SOS Kobach’s motion to dismiss the Court’s previous decision in <i>Belenky v. Kobach (2013)</i> . ⁵⁰
July 2016	Kansas	Kansas SOS Kobach issues a “Temporary Regulation” that formalizes Kansas’s bifurcated voter registration, in direct conflict with the District Court’s ruling in <i>Belenky v. Kobach (2013)</i> . ⁵¹ In <i>Brown v. Kobach (2016)</i> , plaintiffs challenge the “Temporary Regulation” and Kansas’s bifurcated voter registration system on the grounds that it violates state election law and disenfranchises Kansas voters. ⁵²
September 2016	Alabama, Kansas, Georgia	In <i>League of Women Voters v. Newby (2016)</i> , the League of Women Voters files suit in opposition to EAC’s ruling. The D.C. Circuit Court of Appeals temporarily prohibits EAC from permitting Alabama, Kansas, and Georgia to require proof of citizenship on the Federal Form, on the grounds that “Newby never made the necessity finding required by [statute].” ⁵³ The D.C. Circuit Court also remands the decision back to district court.
November 2016	Kansas	In <i>Brown v. Kobach (2016)</i> , the Kansas District Court permanently prohibits Kansas SOS Kobach from creating a bifurcated voter registration system. ⁵⁴ The Court rules that Kobach “simply lacks the authority to create a two-tiered system of voter registration.” ⁵⁵
June 2017	Alabama, Kansas,	After the District Court remands the <i>League of Women Voters v. Newby (2016)</i> decision to be settled by the Election

⁴⁹ <https://www.aclu.org/legal-document/belenky-v-kobach-summary-judgment>

⁵⁰ <https://www.aclu.org/cases/belenky-v-kobach>

⁵¹ <https://www.kansascity.com/news/politics-government/article89057102.html>

⁵² <https://www.aclu.org/legal-document/brown-v-kobach-petition>

⁵³ <https://casetext.com/case/league-of-women-voters-of-us-v-newby>

⁵⁴ <https://www.aclu.org/press-releases/court-permanently-blocks-kansas-dual-voter-registration-system>

⁵⁵ <https://www.aclu.org/legal-document/brown-v-kobach-memorandum-decision-and-order>

	Georgia	Assistance Commission, the EAC is unable to determine whether Newby acted in his authority to permit the states' requests to require proof of citizenship. ⁵⁶ Given this indecision, the September 2016 prohibition on the proof of citizenship requirement stands.
November 2017	Arizona	<p>In <i>LULAC v. Reagan (2017)</i>, plaintiffs in Arizona file suit against the state's bifurcated voter registration system, on the grounds that it disenfranchises Arizona voters for the following reasons:^{57, 58}</p> <ul style="list-style-type: none"> • While under the system, voters do not need to submit proof of citizenship using the Federal Form to be eligible for federal elections, voters that fail to submit proof of citizenship using the State Form are not registered for state <i>or</i> federal elections. • The Arizona Secretary of State (SOS) already has the necessary information to verify a voter's citizenship by comparing registration information with records from the Arizona Motor Vehicles Division (MVD), so the proof of citizenship requirement is burdensome. • There is considerable evidence that many Arizona voters have had their registrations rejected due to this policy. Furthermore, few of these voters have been able to successfully re-register after having their initial registration rejected.
June 2018	Arizona	<p>Parties in <i>LULAC v. Reagan (2017)</i> agree to the following settlement:⁵⁹</p> <ul style="list-style-type: none"> • For voters submitting State Forms or Federal Forms, the Arizona Secretary of State (SOS) must accept these forms and register these voters for federal elections even without proof of citizenship. • For voters that do not provide proof of citizenship, the SOS must automatically check these voters against Arizona's Motor Vehicles Division (MVD) database to verify citizenship.

⁵⁶ <https://www.brennancenter.org/our-work/court-cases/league-women-voters-v-newby>

⁵⁷ <https://campaignlegal.org/cases-actions/lulac-v-reagan>

⁵⁸ <https://campaignlegal.org/sites/default/files/lulacvreagancomplaint.pdf>

⁵⁹ <https://campaignlegal.org/sites/default/files/Consent%20Decree.pdf>

		<ul style="list-style-type: none"> ● If a voter holds an “F-Type License,” denoting a non-citizen in the database, this voter is determined to be ineligible to vote in all elections. The SOS must notify these voters that they must submit proof of citizenship to be eligible to vote in all elections. ● If a voter does not have an “F-Type License,” but still does not have verified citizenship, the SOS must notify these voters that they must submit proof of citizenship to be eligible to vote in state elections, but will remain eligible for federal elections regardless.
April 2020	Kansas	<p>In <i>Fish v. Schwab</i> (2020), the 10th Circuit Court of Appeals rules that Kansas may not require proof of citizenship for voter registration, on the ground that such requirements violate the NVRA and the Equal Protection Clause.^{60, 61} Alongside other states’ attorneys general, Texas Attorney General Ken Paxton files an amicus brief in support of Kansas.</p>
Present	Mississippi, Arizona, Alabama, Kansas, Georgia	<p>Mississippi: According to their Secretary of State’s website, Mississippi does not appear to bifurcate its voter registration process.⁶²</p> <p>Arizona: The Arizona SOS website does not currently appear to comport with the settlement reached in <i>LULAC v. Reagan</i> (2017). Under that settlement, voters who do not submit proof of citizenship will instead have their citizenship checked against records maintained by the Arizona Motor Vehicles Division (MVD). However, this step is not mentioned on the Arizona SOS website. Per the website: “A person who submits valid proof of citizenship with his or her voter registration form (regardless of the type of form submitted) is entitled to vote in all federal, state, county and local elections in which he or she is eligible...failure to [submit proof of citizenship] means the person will only be eligible to vote in federal elections. A “federal only” voter will become eligible to vote a “full ballot” in all federal, state, county and local</p>

⁶⁰ <https://law.justia.com/cases/federal/appellate-courts/ca10/18-3133/18-3133-2020-04-29.html>

⁶¹ http://www.emporiagazette.com/free/article_9c128de4-8a4f-11ea-befd-fb9c54a305bd.html

⁶² <https://www.sos.ms.gov/voter-id/register>

		<p>elections if he or she later provides valid proof of citizenship to the appropriate County Recorder's office.”⁶³</p> <p>Alabama: According to the voter registration form on their SOS website, Alabama does not appear to bifurcate its voter registration process.⁶⁴</p> <p>Kansas: According to the voter registration form on their SOS website, Kansas does not appear to bifurcate its voter registration process.⁶⁵</p> <p>Georgia: According to the voter registration form on their SOS website, Georgia does not appear to bifurcate its voter registration process.⁶⁶</p>
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⁶³ <https://azsos.gov/elections/voting-election/proof-citizenship-requirements>

⁶⁴ https://www.sos.alabama.gov/sites/default/files/voter-pdfs/nvra-2.pdf?_ga=2.196203180.1013626710.1624471715-992443022.1623263784

⁶⁵ <https://www.sos.ks.gov/forms/elections/voterregistration.pdf>

⁶⁶ https://sos.ga.gov/admin/files/GA_VR_APP_2019.pdf

Appendix 1: Federal Election Law and Proof of Citizenship Requirements in Voter Registration⁶⁷

The National Voter Registration Act (NVRA) prescribes three methods for registering voters in federal elections:

- By an application made simultaneously with an application for a driver’s license.
- By a mail-in application using the Federal Form designed by the Election Assistance Commission (EAC)—an agency created during the Help America Vote Act of 2002 (HAVA).
- By an in-person application at state voter registration agencies.

The NVRA creates two forms: the “Motor Voter” form and the “Federal Form.”

- The “Motor Voter” form is used to simultaneously complete voter registration and driver’s license applications.
- The “Federal Form” is created by the Election Assistance Commission as a nationally uniform voter registration application that can be used to register by mail and in-person at designated locations.⁶⁸ The top of the Federal Form asks applicants if they are citizens of the United States and if they will be 18 years old on or before Election Day. Applicants that indicate “yes” to both questions must then:
 - Supply personal information, including an identification number as required by the state. According to the Federal Form, this identification number is used only for election administration purposes: “Federal law requires that states collect from each registrant an identification number. If you have neither a driver’s license nor a social security number, please indicate this on the form and a number will be assigned to you by your state.”⁶⁹
 - Sign that they are a citizen of the United States, meet their state’s voting eligibility requirements, and attest that they have provided information that is true to the best of their knowledge under penalty of perjury.
- States do not have to use the Federal Form exactly, but must meet the following criteria in creating their own “State Form:”
 - The State Form may only require identifying information as is necessary to enable a state election official to assess voter registration eligibility and allow other election processes. This includes the applicant’s signature; data relating to previous registrations; and a statement that specifies all eligibility requirements; as well as an attestation that the applicant meets each requirement. It also requires a signature from the applicant under penalty of perjury.

⁶⁷ <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/04/17/08-17094.pdf>

⁶⁸ Form can be found here: https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf

⁶⁹ https://www.eac.gov/sites/default/files/eac_assets/1/6/Federal_Voter_Registration_ENG.pdf

- The State Form may not require notarization or other formal authentication.
- The State Form must list the voter eligibility requirements and penalties for false applications set forth in the attestation portion of the form; a statement that, if an applicant declines to register to vote, this will remain confidential and only be used for voter registration purposes; and a statement that if an applicant registers to vote, the office where they submit a voter registration application will remain confidential and only be used for voter registration purposes.
- States may petition the Election Assistance Commission to change/update information on the Federal Form, but they may not require additional information on their State Form unless this information is approved on the Federal Form.
- States are exempt from the NVRA if they do not require voter registration or if they allow for same-day registration at polling places. As of this memo, these states are Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming.⁷⁰

⁷⁰ <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>