

# **EXHIBIT 2**

013-010



**KEN BENNETT**  
SECRETARY OF STATE  
STATE OF ARIZONA



August 20, 2013

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SOLICITOR GENERAL'S OFFICE

Office of the Attorney General  
Mr. Tom Horne  
1275 West Washington St.  
Phoenix, AZ 85007-2926

Dear Attorney General Horne:

The United States Supreme Court issued its opinion in Arizona v. Inter Tribal Council of Arizona, Inc., on June 17, 2013. While affirming the 9<sup>th</sup> Circuit Court of Appeals finding preemption, the Court made it abundantly clear that the National Voter Registration Act of 1993 (NVRA) requires states "to permit perspective voters to register to vote in elections for *Federal office* (emphasis added) . . ." using the federal form.

In 2004, Arizona voters approved the initiative measure Proposition 200. Among other things, Proposition 200 requires Recorders to "reject any application for registration that is not accompanied by satisfactory evidence of United States citizenship."

While Arizona may be preempted from asking voters to attach additional documentation to the federal form that demonstrates citizenship absent EAC approval, using the federal form does not preclude Arizona from using information in our possession to establish eligibility for state elections. Indeed, approximately ninety percent of applicants using the federal form provide an Arizona driver license number or social security number that is compared against databases and establishes satisfactory evidence of citizenship.

Could you answer the following questions per 41-193, Arizona Revised Statutes:

- 1) For the other ten percent of applicants, who use the federal form and who do not provide sufficient information to determine citizenship, are those applicants permitted, under Arizona law, to be registered to vote in state and local elections?
- 2) If the answer to question 1 is "no" then is there sufficient authority and is the state required, per Proposition 200 and the recent Supreme Court opinion, to issue "federal election only" ballots to those applicants?
- 3) If the answer to question 1 is "no" then are individuals who registered using the federal form, and who failed to provide a driver license number or SSN, qualified to sign candidate, initiative, referendum and recall petitions for state and local matters?

Sincerely,

Ken Bennett  
Secretary of State