

# The Obama Administration Wants to Make Sure Non-Citizens Vote in the Upcoming Election

Loretta Lynch vs. the US Election Commission which [National Review Online](#):

Several well-funded organizations – including the League of Women Voters and the NAACP – are fighting efforts to prevent non-citizens from voting illegally in the upcoming presidential election. And the United States Department of Justice, under the direction of Attorney General Loretta Lynch, is helping them.

On February 12, these groups filed a [lawsuit](#) in D.C. federal court seeking to reverse a recent decision by the U.S. Election Assistance Commission (EAC). The Commission's decision allows Kansas and other states, including Arizona and Georgia, to enforce state laws ensuring that only citizens register to vote when they use a federally designed registration form. An initial hearing in the case is set for Monday afternoon, February 22.

Under federal law, the EAC is responsible for designing the federal voter-registration form required by the National Voter Registration Act, or Motor Voter, as it is commonly called. While states must register voters who use the federal form, states can ask the EAC to include instructions with the federal form about additional state registration requirements. Some states are now requiring satisfactory proof of citizenship to ensure that only citizens register to vote.

Under Article I, Section 2 and the Seventeenth Amendment to

the Constitution, states have the power to set the “Qualification requisite for electors.” As with many issues, the Left disdains the balance the Framers adopted in the Constitution and objects to this delegation of power to the states. They prefer to see power over elector eligibility centralized in Washington, D.C.

So when Arizona sought to include citizenship-verification requirements with voter-registration forms, the institutional Left – including the League of Women Voters, People for the American Way, Common Cause, Project Vote, and Chicanos for La Causa – brought a lawsuit claiming that the EAC hadn’t approved such requirements. Incredibly, this fight over whether states can ensure that only citizens are voting went all the way to the U.S. Supreme Court. In 2013 in [\*Arizona v. Inter Tribal Council of Arizona\*](#), a divided Court said that Arizona could not implement such a requirement unless and until the EAC agreed to change the instructions for use of the federal form to include the Arizona requirements.

However, the majority [\*opinion\*](#) in that case, written by Justice Antonin Scalia, stipulated that if the EAC refused Arizona’s request to accommodate the proof-of-citizenship requirement, the state could sue the EAC and establish in 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.”

The Court went so far as to say that Arizona could also claim that a refusal by the EAC would be “arbitrary,” since the agency “has accepted a similar instruction requested by Louisiana.” Indeed, the Court noted, the EAC had “recently approved a state-specific instruction for Louisiana requiring applicants who lack a Louisiana driver’s license, ID card, or Social Security number to attach additional documentation” to the federal voter-registration form.

Arizona asked, and a single bureaucrat at the EAC named Alice Miller, who was not an EAC commissioner, but only the *acting* executive director, denied the request. It's not even clear that Miller had the right to make this – or any other – decision. At the time, a quorum did not exist on the bipartisan, four-member independent commission.

And that decision is starting to look even more suspect. It seems that Miller may not have been the one who actually made the decision after all. Sources inside the Justice Department tell me that, in fact, it was partisan, left-wing lawyers in the Voting Section of the Civil Rights Division at the Justice Department who actually drafted the denial letter. This is significant for several reasons.

First, the EAC is supposed to be an independent federal agency. While the president is empowered to nominate commissioners for the two Democratic and two Republican commission slots, in practice the president consults with the majority leader of the Senate (Mitch McConnell) and the speaker of the House of Representatives (Paul Ryan), as well as the leaders of the minority party in both houses, to pick the nominees. Because the EAC deals with federal election administration, the legislation establishing the agency – the 2002 Help America Vote Act – was designed so as to provide the EAC with political balance and to be outside the president's control.

Allowing lawyers for the highly [partisan](#) Voting Section to write agency policy obliterates all semblance of independence and bipartisan balance. The Voting Section of the Civil Rights Division has become one of the most controversial and ideological components in the entire U.S. government. It is the same cadre of lawyers that dismissed a voter-intimidation charge against members of the New Black Panther Party who physically threatened voters in Philadelphia to help President Barack Obama get elected in 2008; that has waged a war on voter ID and other election-

integrity measures; and that has refused to enforce the Voting Rights Act in a race-neutral manner as called for by the plain text of the statute.

It was Voting Section lawyers who [fought](#) in federal court to keep Kansas from enforcing a similar state law to ensure that only citizens registered to vote. One of those lawyers, Bradley Heard, engaged in potentially unethical conduct when he tweeted on his private Twitter account his impressions of the federal judge after a hearing in Kansas. Justice Department lawyers are not allowed to use social media to share with the public confidential assessments about the cases on which they work. According to a source, Heard's actions prompted a quick internal memo from DOJ ethics officials reminding Voting Section lawyers they may not take to social media to bash Kansas and talk about ongoing Justice Department litigation...