When it comes to voting, Arizona, Kansas and Oregon have something in common: they each have, or are developing, a “dual” system under which some voters can vote in all races and others can vote only in some races.

Arizona and Kansas have gotten most of the press. In these two states, the newly minted two-tiered systems are a result of state laws colliding with federal laws over proof of citizenship for registering to vote.

Proof of Citizenship

Both Arizona and Kansas have enacted state laws that require proof of citizenship for new voter registrations. (Two other states, Georgia and Alabama, have similar proof of citizenship laws on the books but have not implemented them yet.)

The federal National Voter Registration Act of 1993 (NVRA), however, requires states to accept a federal voter registration form that does not ask for proof of citizenship. The Department of Justice describes the NVRA registration requirement this way:

“The voter registration application must state each voter eligibility requirement (including citizenship), contain an attestation that the applicant meets each requirement, state the penalties provided by law for submission of a false voter registration application and require the signature of the applicant under penalty of perjury.”

In sum, Arizona and Kansas laws say “we need proof,” but federal law says “a signature is sufficient.”

In June the U.S. Supreme Court, in Arizona v. Inter Tribal Council, dealt with the conflict. It affirmed that Arizona must accept registrations completed on the federal form for federal elections. It did not strike down the state law, however. While the Supreme Court dealt only with Arizona, Kansas is in a similar position.

As a result of the separate requirements set out in state and federal law, state officials have taken two actions. First, Kansas and Arizona have filed a joint complaint against the U.S. Election Assistance Commission (EAC), which manages the federal registration form. In the past, these states requested that the EAC include state-specific instructions on the form, but the request has been denied. The case is being heard on an expedited basis.

(Cont. on page 2)
Dual Voting Systems in Three States  (cont. from page 1)

Second, they are developing strategies for dividing voters into two tiers. One tier includes voters who have registered with the state form, complied with the state requirement to show proof of citizenship and can vote on all races and ballot measures. The other tier is for voters who have used the federal form, have not responded to follow-up efforts asking them to show proof of citizenship and can vote only in federal races.

Proof of Residency

Oregon’s “dual system” is almost entirely different from those in Arizona and Kansas. The issue isn’t proof of citizenship; it’s proof of state residency. Section 303(b) of the Help America Vote Act (HAVA) includes a requirement that first-time voters—regardless of whether they apply on the federal form or a state form—must show some kind of an ID before voting. The options are “a current and valid photo identification” or “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.”

It’s the law all across the land: no first-time ID, no voting in federal elections. Virtually all states, including Oregon, do outreach to voters who didn’t show ID when they registered to ensure that they are prepared to do so when they vote. Unlike Oregon, most states also have adopted the federal requirement for first time voters to show an ID. Often, the very same words from HAVA are included in state statute.

In Oregon, voters who haven’t shown the federally-required ID, but otherwise have completed their registration, can still vote in Oregon races. They just can’t vote on congressional or presidential races. This dual system came about because Oregon wanted “to enfranchise to the maximum level,” says acting state elections director, Gina Zejdlik.

More on Oregon

While Oregon’s system has quietly worked for years, not everyone is pleased with it. Oregon Representative Kim Thatcher (R) tried to change what she calls “a double standard,” with the introduction of HB 2363 in 2013. She will reintroduce legislation in 2014, with a few tweaks. “I look at this legislation as adopting what the federal government has in place for federal elections,” she says. “I think the federal standards are pretty minimal in terms of determining if a person is a qualified voter, but at least let’s get that standard adopted here.”

In Oregon, up to 11,000 voters right now could be categorized as not having supplied the federally-required ID. “Our concern is that we don’t issue separate ballots,” says Zejdlik. “These voters get the whole ballot, so they think they’re voting on everything, but if they haven’t complied with federal law, we have to enforce it.” Local governments set aside ballots from these voters, and only count the down-ballot races. County clerks are required to do outreach to these voters to “cure” their registrations. “It’s a delicate issue,” says Zejdlik.

Arizona Action

In light of the U.S. Supreme Court decision last summer, Arizona’s secretary of state, Ken Bennett, asked the Arizona’s attorney general, Tom Horne, for an opinion on whether people who registered on the federal form could be permitted to vote in all elections. The answer was ‘no’: “Registrants who used the Federal Form and did not provide sufficient evidence of citizenship are not eligible to vote for state and local races. For state and local matters, registration is contingent on each applicant’s providing evidence of citizenship.”

What will this mean, administratively?

In October, Tammy Patrick, federal compliance officer for Maricopa County’s elections department, analyzed her county’s voter registrations, in light of the attorney general’s ruling. In Maricopa County, Arizona’s most populous county, 12,651 of the 426,766 new voter registrations that arrived between Aug. 1, 2012 to Oct. 7, 2013 came on federal forms. Many of these registrations provided sufficient information to determine (cont. on page 3)
citizenship, such as an Arizona driver’s license number. Of the registrations, 954 are still unresolved, and if they remain so, these voters will vote a “Federal Only” ballot.

The estimated cost of printing and mailing “Federal Only” ballots is $250,000 for the county. Other costs, such as information technology upgrades and training poll workers on new procedures, will be additional.

And Kansas?

Kansas may have three categories of voters, not just two. The first category: people who have registered and shown proof of citizenship and thus can vote in all races.

The second category: people who registered with the state form but have not proved their citizenship. These registrations are “suspended” and the voters can’t vote at all until proof is shown. Currently, 18,000 voters are in this “suspended” category. Administrators are reaching out to them.

The third category: people who used the federal form since Jan. 1, 2013, and have not shown proof of citizenship. “The decision is not set in stone, but it seems most likely that individuals who registered to vote using the federal form without providing proof of citizenship will receive a ballot with only federal races on it,” says V. Kay Curtis, spokesperson for Kansas’ secretary of state, Kris Kobach.

The third category is small. “Especially since Kansas moved to online voter registration quite a few years ago, the majority of our forms are coming electronically,” says Jamie Shew, Douglas County clerk. As few as 20 come in via the federal form in any election cycle in his county with 113,000 residents.

Small or not, creating a separate ballot is “where this gets complex and impacts resources,” says Shew. “In a general election, I usually have 130 ballot styles; and in a primary 250 to 260. Now it will be double.” Not only does that involve design and printing costs; “you’ve increased your complexity in handing out the right ballot to each voter,” he says.

The first election to use this new system will be the August 2014 state primary.

Online Voter Registration: The Bipartisan Trend in Elections

Webinar: Tuesday, Nov. 12, 1 p.m. Eastern/Noon Central/11 a.m. Mountain/10 a.m. Pacific

Allowing citizens to register to vote online has proven to be astoundingly cost effective in some cases, and has improved accuracy in our nation’s voter rolls. It’s also a rare issue in elections administration that appeals to Democrats and Republicans alike. A dozen years ago, online voter registration was unheard of. Now, 19 states have adopted it, seven of them since 2012. For states that are thinking about “going online,” this webinar will explore the growth of online voter registration, its benefits, possible pitfalls to avoid, and the latest question: how can security be managed so hackers don’t get into the system? Register now. For more information contact Wendy Underhill, 303-364-7700.
It’s Free: NCSL’s Redistricting & Elections Task Force Meeting

In 2014, how will Congress, the Department of Justice and states respond to last summer’s U.S. Supreme Court ruling on the Voting Rights Act? What do election cognoscenti predict for 2014? How is software changing the way states run elections? Find answers by joining NCSL’s Redistricting and Elections Task Force meeting at the Marriott Wardman Hotel, in D.C., on Dec. 3-4. On Tuesday, we’ll listen, talk and learn. On Wednesday, we’ll take a field trip to the election office in Arlington, Va., for a real-world view of elections policy in action.

Elections Expectations: NCSL’s Redistricting and Elections Task Force Meeting

Tuesday, December 3

9:00–10:30 a.m.  Elections Policy: Looking Ahead to 2014 (with Doug Chapin, moderating)
10:45–11:45 a.m.  The Future of Elections: Apps and Gadgets
Noon–1:15 p.m.  Lunch (with Task Force Planning)
1:30–2:30 p.m.  The View from Capitol Hill: Congressional Staffers Talk—and Listen
2:30–3:15 p.m.  Redistricting and Elections Discussion with the Department of Justice
3:30–4:15 p.m.  Academic Perspectives: The Voting Rights Act, Post-Shelby County
4:15–5:00 p.m.  Real World Perspectives: The Voting Rights Act, Post-Shelby County

Wednesday, December 4

9:00–11:45 a.m.  Visit the Arlington Elections Office, hosted by Arlington’s General Registrar Linda Lindberg and Virginia’s State Election Director Don Palmer

The task force meeting is a “pre-con” for NCSL’s Fall Forum. This is good news because participants can attend both the task force and then the fall forum, which covers all kinds of legislative subjects. While there is no fee for the task force meeting, we do want to know who’s coming, so please RSVP to Morgan Cullen or Wendy Underhill. We look forward to seeing many of you there.

One big number

848. That is the number of responses the National Council on Disability received for a recent survey on voting for people with disabilities. The results of the survey are the basis for the October report, Experience of Voters with Disabilities in the 2012 Election Cycle. The first three “key findings” are:

1) People with disabilities continue to face barriers in exercising their voting rights because of architectural and physical barriers at registration and polling sites;

2) Voters with disabilities do not have equal access to voting systems because states and localities have not invested adequate resources, planning, and training to provide reliable, accessible voting technology; and

3) Voters with disabilities face discrimination at voter registration and polling sites resulting from poorly trained election personnel and volunteers.

See the full report for recommendations.
From the Chair

Senator Jeff Danielson (D-IA) has served on the Iowa Senate’s State Government Committee for 10 years, and chaired it for three. He holds a masters degree in public policy and self-identifies as a policy geek. In terms of elections, he says that “democracy is not a spectator sport.” The Canvass spoke with Senator Danielson on October 22.

Excerpts:

- I want Iowa to have the most secure, accurate and efficient elections in America without disenfranchising a single voter.

- We’ve seen what I call ‘extreme, aggressive’ proposals around the country and here in Iowa. In my view, these would disenfranchise citizens from participating in elections by creating barriers to voting prior to Election Day and at polling places, under the guise of security.

- In terms of voting technology, I believe our goal should be one person/one vote/one way to verify that vote. In 2006 we passed a law requiring a voter-verified paper audit trail, using the same voting machines in every Iowa polling place.

- We have a Republican county auditor, Ken Kline, who’s led elections technology innovation efforts. He invented, tested and has perfected “Precinct Atlas” to better administer elections. We believe this system can strengthen our state and local partnerships, and I’m hopeful the state will commit resources to ramp it up so it can go statewide. Right now it is used in about half the counties.

Read the full interview for more with Senator Danielson.

The Election Administrator’s Perspective

Sharon Harrington has been the supervisor of elections for Lee County, Fla., since 2004. Lee County, on Florida’s gulf coast south of Tampa, has beautiful shell beaches and 386,732 registered voters. The Canvass spoke with Ms. Harrington on October 11.

Excerpts:

- Some people think we are purging voters; I wish that word would go away. People think we’re going in with a list of names and hitting delete, delete, delete. It doesn’t work that way. It’s a very systematic removal of ineligible voters, period.

- I’ve set up a Community Outreach and Awareness Program, and said to my new staff, ‘if I find you sitting at your desk for more than one day, you’re not doing what you’re supposed to do.’

- We had a total breakdown in 2012 in our state, and it was caused by legislation. The legislature shortened the days for early voting. There were people waiting for hours, and by my standards that’s totally unacceptable.

- Since this happened, our state legislature fixed all the problems and gave us more flexibility for early voting. And we are finally getting questions, and being asked what do you think, and is this going to work?

Read the full interview for more with Sharon Harrington.
Worth Noting

- If you’re a legal scholar focusing on election administration—and even if you’re not—read Ned Foley’s *Voting Rules and Constitutional Law*.
- MIT’s Charles Stewart III hung around polling places in September and wrote up his thoughts at *Election Updates*. One super-simple evaluation tool he used was to sketch the traffic flow at the polling places.
- JETS—the online *Journal of Election Technology and Systems*—is new. The journal’s work will be increasingly significant as states and jurisdictions ask, what’s next for our voting equipment? Most states face a soon-to-be-dire need to replace HAVA-funded systems.
- “I think on both sides of the aisle, legislators are very interested in online registration.” Minnesota’s Senator Scott Newman (R).
- *The Sweet Spot for Election Reform* comes from the Bipartisan Policy Center. Author Heather Gerken suggests that in-person early voting passes policy, ideological and political tests. It turns out that the Brennan Center for Justice likes early voting too; see its new report, *Early Voting: What Works*.
- The Overseas Vote Foundation’s *Voting Research Newsletter* reports that all states and the District of Columbia are now transmitting blank ballots by fax, email and Internet download. And for last year’s presidential election, “over 50% of survey respondents indicated using some form of electronic transmission to receive a blank ballot.” The report provides preliminary conclusions about transmission of ballots, return of ballots and counting of ballots. One overarching caveat is that “most states come up short on data collection regarding electronically transmitted ballots.”
- “The biggest issue for voting in long term care facilities is not fraud; it’s access. Often well-intentioned screening of residents means that anyone with a dementia diagnosis is not assisted to vote, with no due process.” Nina Kohn, law professor, Syracuse University. *(The Canvass will cover voting for long term care residents in December.)*
- Last month California enacted *SB 360*, a bill that will allow Los Angeles (or other local jurisdictions) to develop their own voting systems. Of course, *Los Angeles County* already has begun to do so. Kim Alexander, president and founder of the California Voter Foundation, has written a *brief* about it.

From NCSL’s Elections Team

As the year winds down, legislative staff are gearing up in preparation for new legislative sessions. That means we at NCSL are preparing, too. Here’s what we expect to be working on in the next couple of months: voter ID (look for a redesigned webpage coming soon), online voter registration, early/absentee voting, election technology and everything that improves the voter experience or makes elections both fair and secure.

What are your priorities, as you ready for the start of legislative sessions in 2014? We want our priorities to be the same as yours! Please keep in touch.

—Wendy Underhill