

STATEMENT OF
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TO THE
U.S. COMMISSION ON CIVIL RIGHTS
BEFORE THE
U.S. HOUSE OF REPRESENTATIVEES, SUBCOMMITTEE ON ELECTIONS OF THE
COMMITTEE ON HOUSE ADMINISTRATION

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Chair and Members, thank you for holding this hearing on “Voting Rights and Elections Administration in Arizona.” Thank you also for inviting me to testify on the findings of the Arizona State Advisory Committee (the “Arizona Committee”) to the U.S. Commission on Civil Rights on this issue.

On March 9, 2018, the Arizona Committee convened a public meeting in Phoenix, Arizona and heard testimony related to potential barriers to voting in the State of Arizona that may have a disparate impact on voters based on race, color, sex, disability status, and national origin. The Arizona Committee heard testimony from government and election officials, advocacy organizations, election and voting experts, and voter perspective groups on barriers to voting in the following areas: access to polling locations, bifurcated voter registration system, voter ID law, restrictions on mail-in ballots, and on the impact of the 2013 *Shelby County v. Holder* decision, which eliminated the need for Arizona to preclear voting changes to ensure that the voting change did not deny or restrict the right to vote on account of race, color, or membership in a language minority group. The Arizona Committee also received written testimony and took into account testimony received during the January 11, 2018 meeting of the Native American Voting Rights Coalition. After reviewing the oral and written testimony, the Arizona Committee prepared an Advisory Memorandum that summarized its findings and issued recommendations to the U.S. Commission on Civil Rights. A copy of the Advisory Memorandum is available at <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf>. This written testimony will summarize the Arizona Committee’s findings found in the Advisory Memorandum.

Access to Polling Locations

In the aftermath of *Shelby County v. Holder*, in Arizona, almost every county reduced the number of polling locations. This resulted in 212 fewer polling locations statewide before the 2016 election. For example, Pima County, the state’s second-largest county, reported 62 fewer locations. Maricopa County made national headlines with reports of frustrated voters who waited for as long as five hours to cast their ballots during the March 2016 presidential preference election. As of March 2018, there were 60 polling locations which meant there was roughly one polling location for every 21,000 voters. This was in part due to Maricopa County officials who approved a plan to cut polling locations by 85 percent compared to the 2008 presidential preference election and 70 percent compared to the 2012 presidential preference election.

Findings regarding access to polling locations:

- Testimony revealed there has been substantial closure of polling locations across the State. Election officials justified these closures due to a decrease in demand

because of an increase in early voting preference; cost pressures associated with maintaining polling locations and voting equipment; and less locations willing to serve as polling locations because of increased liability, lack of security, lack of compliance with the Americans with Disabilities Act (ADA), and insurance concerns

- To remedy the closure of polling locations, counties have the discretion to implement a vote center model upon approval of a board of supervisors
- County Recorders expressed frustration over the lack of Help America Vote Act funding to support election administration efforts
- Members of the disability community expressed the following concerns regarding access to the polls:
 - poll workers lacked knowledge on how to operate accessible voting machines and machines were not turned on;
 - voting machines did not have the option to change or view access options;
 - polling locations were inaccessible as many lacked wheelchair ramps or elevators, sufficient reserved accessible parking spaces and;
 - on one occasion, a poll worker threatened to call the police because a voter appeared at the wrong polling location.
- Transportation is a barrier for protected voter groups to access the polls. The following examples demonstrate these challenges: a. During the 2016 presidential preference election, many voters with disabilities who relied on public ride service, Dial A Ride, were unable to vote because of the long lines and the limited amount of time they were given before it left.³⁶
- Native American voters residing in reservations, some spanning thousands of square miles, have few polling locations available to them.

Language Access

Language assistance is imperative in Arizona, as 31 percent of Arizona's population is Hispanic and five percent are Native American. As of 2016, 12 of Arizona's 15 counties must comply with Section 203 of the Voting Rights Act by providing translated election material in Spanish or Native American languages.

Findings regarding language access:

- Voting rights experts argue that Native American tribes who reside in jurisdictions that lost Section 203 coverage are likely to continue receiving language access if they maintain collaboration with county officials.
- For example, Gila County was not a covered jurisdiction during the 2016 elections because they did not meet Section 203 covered language criteria, but county

officials continued to employ Apache-speaking election workers due to ongoing collaborations with Native American tribe leaders.³⁸ Similarly, Coconino and Maricopa Counties continue to provide language assistance despite losing Section 203 coverage

- The National Voter Registration Act (“NVRA”) requires designated state agencies to register voters, however there is a legal question regarding whether state agencies operating in counties, especially counties subject to the Section 203 language requirement, should also be providing language assistance in the same manner county officials are required to. For example, a regional office of the Department of Transportation operating in Apache county where Navajo is a covered language, the Department of Transportation may not be required to provide voter registration information in that language.
- Election officials have a process and criteria in place when procuring voting equipment. This includes upload features to store audio clips for language access. These features are key to ensuring voters with language access needs are able to fully participate when using voting equipment.
- The Secretary of State has the following plans to ensure language access:
 - Development of a uniform standard for election websites; and
 - Further discussion regarding translation services, such as Google Translate, are appropriate to use to translate election websites and for election equipment

Voter ID and Bifurcated Voter Registration

Arizona and several other states passed laws requiring proof of citizenship in order to register to vote followed by presentation of proof of identification in order to vote in person. In 2004, Arizona voters passed Proposition 200 that requires prospective voters to provide proof of citizenship when registering to vote. Under this law, a voter must present acceptable identification when voting in person on election day before casting a ballot. Due to this controversial requirement, advocates brought challenged voter registration requirement. In 2012, the U.S. Supreme Court held that requiring proof of citizenship was inconsistent with the National Voter Registration Act. Subsequently, the State created a dual registration system to allow individuals to register to vote with the federal form for federal elections only but, requiring voters in State and local elections to meet the additional voter-approved citizenship requirements

Findings regarding voter ID and bifurcated voter registration

- Testimony revealed that Arizona’s bifurcated voter registration system is confusing and may have prevented voters from participating in State and local

elections due to the proof of citizenship requirement. Communities are who are less likely to have the required ID include: (i) out of state college students, (ii) Native American voters, (iii) minority communities (vi) women, and (v) overseas military personnel.

- Based on testimony, the Secretary of State's Office is currently in litigation regarding requirements of the state voter registration form. The anticipated change may involve acquiring citizenship status electronically by accessing various government databases. This potential election procedure may address the issue of dual registration.
- Native American voters reported that when they went to the polls to vote, they learned they were dropped from registration rolls, but received no notification explaining the reason for being dropped. This poses a challenge for many voters who were similarly dropped because the State's deadline to register is 30 days prior to Election Day.
- Testimony indicated that government databases housing citizenship status are not widely utilized to confirm proof of citizenship of applicants unless election officials take additional steps to confirm citizenship status. For example, in Maricopa County, roughly 96,000 voter registration forms were rejected because applicants were required to resubmit physical documentation of citizenship. To remedy incomplete forms, County officials used the Arizona Motor Vehicle Division (MVD) database to compare names to confirm proof of citizenship.
- Newly naturalized U.S. citizens seeking to register to vote through ServiceArizona, the State's online portal for MVD, must show proof of citizenship by providing the appropriate documents in person or their application will be rejected. This indicates that federal and State government databases do not communicate with each other.
- The State's paper voter registration form is different from the online voter registration form available through ServiceArizona. The State's paper voter registration form provides a space for applicants to add a Tribal ID number but is unavailable on the online registration form. With this discrepancy in mind, Native Americans who choose to register to vote online faced challenges with completing their online form.
- There is reason for concern that Arizona may not be complying with NVRA. According to the American Civil Liberties Union (ACLU), there was a 60 percent reduction in the number of registered voters through public assistance agencies from 1999 to 2015. In 1999, there were 32,137 voters registered through a public assistance agency and in 2015, there were only 13,135.57 In a separate report focused on Native American residents, 42 percent were asked about registering at the MVD and 35 percent were asked through a social service agency

- In 2012, poll workers failed to accept alternative forms of ID from Native American voters, despite the state providing a special procedure for Native American voters to prove their identity.
- Under state and federal law, a felony conviction triggers cancellation of voter registration. Consequently, formerly incarcerated are required to re-register in order to exercise their right to vote. This is a concern because Latino and African American communities are disproportionately affected by felony disenfranchisement. Furthermore, Arizona is ranked the 7th highest in the country and has disenfranchised 220,000 adults and 11.89 percent of African Americans.
- Native Americans with a felony record can participate in Tribal elections, but not in federal or state elections. Advocates stated that it is unclear if whether Native Americans with a felony record were aware of their right to vote, and if poll workers were trained to allow them to vote.
- Voting rights are restored under the discretion of a judge. For some, voting rights can be restored if mandatory fines are fully paid. However, this is not the case for 25 percent of formerly incarcerated individuals who served time in Maricopa County, who did not owe fees, were denied restoration of voting rights due to judge's decision.
- There is a lack of information regarding restoration of voting rights for the formerly incarcerated available through court websites.

Restriction on Mail-in Ballots

The most recent and controversial law to pass related to voting involves a restriction on the collection of mail-in ballots, or HB 2023. In March of 2016, Arizona voters made it a felony for individuals to knowingly collect and turn in another voter's completed ballot, even with the voter's permission. However, exceptions exist for a family member, household member or caregiver of the voter as defined within the statute. Opponents of the law took legal action and argued that this law has a disproportionate impact on minorities. The U.S. District Court for the District of Arizona denied the request for a preliminary injunction, but the decision was overturned by the Ninth Circuit, sitting *en banc*. The Ninth Circuit found that the law likely violated the Fourteenth Amendment and Section 2 of the Voting Rights Act and stated, "it is quite doubtful that the Justice Department would have granted preclearance." The Supreme Court stayed the Ninth Circuit's opinion, and the law remained in effect for the 2016 general election.

On May 8, 2018, the Arizona District Court issued an order upholding the ban on ballot collection and found HB 2023 did not violate either the Constitution or the Voting Rights Act. In doing so, among other things, the court surveyed the number of voters who are affected by the ballot collection ban and compared them against the overall number of

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voters in Arizona to conclude that the law did not have a sufficiently negative impact on voters statewide to raise sufficient concerns. Plaintiffs immediately appealed and in October 2018, a three judge panel of the Ninth Circuit upheld HB 2023. In January 2019, the Ninth Circuit granted a full panel review of the smaller panel ruling.

Findings on restriction on mail-in ballots

Advocates argue a ban on ballot collection may impose a disproportionate burden on Native American voters due to their proximity to a mailbox; and voters who rely on caregivers, friends, family members, or others in their community to collect ballots to take to voting sites.

Arizona has a long history of challenges with guaranteeing the rights of their citizens to vote. We hope that this investigation and findings serve to ensure that all of Arizona's citizens are provided the equal right to vote.