



64 E Broadway Road, Suite 200, Tempe, Arizona, 85282

Phone: (480) 372-4180

STATEMENT OF ALEX GULOTTA, ARIZONA STATE DIRECTOR, ALL VOTING IS LOCAL

**U.S. HOUSE ADMINISTRATION COMMITTEE
SUBCOMMITTEE ON ELECTIONS
HEARING ON “VOTING RIGHTS AND ELECTION ADMINISTRATION IN ARIZONA”**

Chairperson Fudge, Ranking Member Davis, and members of the Subcommittee: My name is Alex Gulotta and I am the Arizona State Director for All Voting is Local. I am honored to appear before this Subcommittee to discuss how the current state of the law is harming voters in Arizona.

All Voting is Local¹ launched in 2018 as a collaborative campaign housed at The Leadership Conference Education Fund, in conjunction with the American Civil Liberties Union Foundation; the American Constitution Society; the Campaign Legal Center; and the Lawyers’ Committee for Civil Rights Under Law. We fight to eliminate needless and discriminatory barriers to voting before they happen, to build a democracy that works for all of us. In Arizona, our campaign has fought unnecessary barriers to voter registration, demanded uniform standards for mail-in ballot processing, and collaborated with tribal partners to ensure that election officials understand and respect the unique needs of their communities.

Voting in Arizona is changing. Vote by mail is increasing. Technology is being upgraded. Voting centers are being implemented. However, since 2013 when the United States Supreme Court struck down the Section 5 preclearance requirements of the Voting Rights Act in Shelby County v. Holder² all of these experiments in voting administration have been made – for the first time since 1972, when Arizona came under Voting Rights Act Section 5 jurisdiction – without notice, transparency, and analysis of whether the proposed change would deny or abridge the right to vote on account of race or membership in a language minority group.

In 2013, in Shelby County v. Holder, five justices of the Supreme Court gutted the most powerful provision of the VRA – the Section 5 preclearance system. That system had enabled the U.S. Department of Justice and federal courts to block proposed discriminatory voting restrictions in states and localities with the most pervasive histories of discrimination – like Arizona – before these restrictions could disenfranchise voters. It ensured that, when jurisdictions changed the

¹ More information is available at www.allvotingislocal.org.

² Shelby County v. Holder, 570 U.S. 529 (2013).

rules or operations of voting, that the changes were public, transparent, and studied to ensure they would not discriminate against voters because of their race or language. In *Shelby County*, Chief Justice Roberts, on behalf of the five-person majority, stated that Congress must rely exclusively on current conditions in order to lawfully require states to preclear voting changes.

The *Shelby County* decision has harmed voters in Arizona in practical, tangible ways. Three examples of these harms are discussed below.

Discriminatory Restrictions on Vote by Mail

In 2011, the Arizona legislature passed S.B. 1421, a statute that outlawed the collection of mail-in ballots by community groups. Historically, organized ballot collection drives were conducted in Latino, African American, and Native American communities. The bill was specifically targeted to end these practices. The U.S. Department of Justice at the time refused to preclear the law without the state demonstrating first that the law would not disproportionately impact communities of color. Unable to provide such data, the legislature quickly repealed the law at the next legislative session.

The Arizona legislature passed new ballot collection restrictions in 2013. The new statute, H.B. 2305, outlawed ballot collection by parties or campaigns and required non-partisan ballot collectors to complete and return an affidavit for every ballot collected. In response, citizen groups collected over 140,000 signatures for a citizen referendum to repeal H.B. 2305 and to require a supermajority for future legislation related to ballot collection. To prevent the referendum from moving forward, the legislature reversed itself, again, and repealed the ballot collection restrictions.

However, in 2016 following *Shelby County v. Holder*, the Arizona legislature passed H.B. 2023, a ballot collection prohibition like the law previously passed in 2011 that the U.S. Department of Justice had refused to preclear. The constitutionality of H.B. 2023 is currently on appeal in *DNC v. Reagan*³ before an *en banc* panel of the 9th Circuit Court of Appeals. However, as Chief Judge Sidney Thomas stated in his dissent in the three-judge panel decision in this case: “H.B. 2023, which criminalizes most ballot collection, serves no purpose aside from making voting more difficult, and keeping more African American, Hispanic, and Native American voters from the polls than white voters.”

Polling Place Closures, Movements, and Changes

Prior to the *Shelby* decision, Section 5 ensured that jurisdictions known to engage in voting discrimination were not using budget cuts or voting system modernization as cover to disenfranchise people of color. Now that Section 5 has been gutted, it is much harder to know what factors election officials consider when determining polling place closures and movements.

³ *DNC v. Reagan*, 904 F.3d 686, 715 (9th Cir. 2018) (vacated pending en banc review)

Further, there is virtually no insight into election officials' decision-making concerning how polling places are set up and the ways in which voters cast ballots within them.

As noted in The Leadership Conference Education Fund's recent report – *Democracy Diverted: Polling Place Closures and the Right to Vote*: “Closing polling places has a cascading effect, leading to long lines at other polling places, transportation hurdles, denial of language assistance and other forms of in-person help, and mass confusion about where eligible voters may cast their ballot. For many people, and particularly for voters of color, older voters, rural voters and voters with disabilities, these burdens make it harder – and sometimes impossible – to vote.⁴”

Nationwide, between 2012 and 2018, there were 1,688 poll closures across the country in jurisdictions formerly covered by Section 5. Of those polling place closures, 320 were in Arizona alone. Maricopa County went from 671 to 500 polling locations – a 25% reduction, and Cochise County went from 49 to 17, a stunning 65% reduction.

Polling place closures are compounded by the concomitant movement of polling places, which causes confusion about where a voter can properly cast a ballot. As Chief Judge Thomas noted in his dissent in *DNC v Reagan*, “In 2016, Maricopa went from 60 vote centers for the presidential preference election to 122 polling locations for the May special election to over 700 assigned polling locations in the August primary and November general elections.” *DNC v Reagan*, 904 F.3d at 732. The impact of these changes causes harm. Chief Judge Thomas noted, “In other words, the paths to polling places in the Phoenix area is much like the changing stairways at Hogwarts, constantly moving and sending everyone to the wrong place. The effect? Voters whose polling location changed were forty percent likelier to vote OOP [out of precinct].” Under Arizona law, out-of-precinct ballots are completely rejected. This practice, which results from polling place confusion, “places a ‘discriminatory burden’ on African Americans, Hispanics, and Native Americans.” *Id* at 735.

And it is not only that polling places are closing and moving. Rather, post-*Shelby*, Arizona has implemented significant changes in polling place administration without publishing any data on the racial impact of such changes. Non-precinct-based vote centers may offer benefits to some voters, but we should not implement such changes without first studying their impact on voters of color. In addition, at times, the resources allocated to specific polling places are simply inadequate to meet demand. For example, in November 2018 at Arizona State University's main campus in Tempe, Arizona, long lines to vote were reported throughout the day – and the last votes were not cast until two hours after the polls closed.⁵ Despite the advocacy efforts of All Voting Is Local and many other advocacy groups, attempts to keep the polls open past 7 pm

⁴ The Leadership Conference Education Fund. (2019). *Democracy Diverted: Polling Place Closures and the Right to Vote*. *Democracy Diverted: Polling Place Closures and the Right to Vote*. Page 8. Retrieved from <https://civilrights.org/democracy-diverted/>

⁵ Morse, S., & Ficarro, S. (2018, November 7). Election Day starts with 'bumps' and ends with long voting lines in Maricopa County. Retrieved September 26, 2019, from <https://cronkitenews.azpbs.org/2018/11/06/arizona-midterm-elections/>

were not successful. Not everyone has the privilege of being able to wait in line for hours to vote. Voters have jobs, voters have classes, voters have family responsibilities.

As stated in the report, *Democracy Diverted: Polling Place Closures and the Right to Vote*, “Next to the ballot itself, the most identifiable element of our democracy’s voting process is the polling place. It should – and it must – be accessible to all. When it is not, the barriers to participation can be high. Moving or closing a polling place – particularly without notice or input from communities – disrupts our democracy. It can mean the choice between picking up a child from school or voting. Taking needed overtime or voting. Taking a bus across town or voting. In a truly inclusive democracy, no one is forced to make these difficult choices.⁶”

At the same time polling locations are changing, so too are the technologies that serve voters inside them. “Sitebooks” meant to quickly check-in voters by scanning their ID and providing them with the correct ballot, only work with a standard DMV-issued identification. A voter who provides, for example, a tribal identification may need to wait while a poll worker verifies her identity. Voters with limited English proficiency may not be able to navigate the machines without manual assistance. Furthermore, technological failures may significantly slow the process of voting, or even bring voting to a standstill, if there is not a manual back-up plan. This can cause long lines and wait times at the polls. And there are rarely express plans to extend voting hours if these new systems break down. The technological changes may provide improvements to the voting experience, but without preclearance, they are conducted without first determining if they harm voters of color.

New and Burdensome Photo Identification Requirements

Recently, Arizona expanded the scope of its photo ID law, making it harder to cast an early ballot in-person. If a voter casts a ballot by mail in Arizona, the voter’s signature on the ballot envelope serves as the ID required to vote. And for years, early in-person voting was conducted in the same manner: a voter placed the ballot in an official envelope, signed it, and the signature served as the ID required to vote.

But in the spring of 2019, the Arizona legislature passed S.B. 1072, a new law requiring a photo ID for in-person, early voting ***in addition to a voter’s signature***. Now – breaking with long-standing practice – voters who cast an early, in-person ballot must produce two forms of ID: a photo ID ***and*** a matching signature. Due to the loss of preclearance, Arizona was not required to establish that this law is racially neutral.

The ability of a voter to cast a ballot by mail is directly related to a voter’s ability to reliably send and receive any form of mail. In Arizona, 96% of non-Native Americans live on a U.S. Postal Service (USPS) postal route whereas only 26% of Native Americans live on a USPS postal

⁶ The Leadership Conference Education Fund. (2019). *Democracy Diverted: Polling Place Closures and the Right to Vote*. *Democracy Diverted: Polling Place Closures and the Right to Vote*. Page 52. Retrieved from <https://civilrights.org/democracy-diverted/>

route. As a result, vote-by-mail is more difficult in many Native American communities and early, in-person voting provides greater access to the ballot box. To address this need, jurisdictions like Navajo County offer mobile, in-person, early voting in many community locations such as at the Friday night flea market and on Saturdays in the grocery store parking lot. Voters always carry their signatures with them, but they may not always carry their tribal ID. It is not difficult to deduce that Native Americans are harmed by this new and unnecessary requirement.

CONCLUSION

Fair and equitable access to the ballot box is a cornerstone of our democracy. In jurisdictions previously covered by Section 5 preclearance, like Arizona, the affirmative duty to avoid negative racial impacts of election administration changes served as a key element in ensuring fair and equitable access. Our democracy will suffer until we restore and modernize the Voting Rights Act to reinstate preclearance and implement provisions that most broadly protect those who have historically suffered from the impacts of voter disenfranchisement.

In the meantime, until preclearance is restored, Arizona voters need stability. Voters need election officials to provide:

1. Voluntary determinations of whether a proposed election change would have a discriminatory purpose or effect;
2. Stable polling place locations for 2020 voting;
3. Increased equipment and support for under-resourced polling locations;
4. Detailed back-up plans for Election Day problems, especially for technology failures;
5. And, if there are Election Day difficulties, voters need election officials, regardless of party affiliation, to agree upon standards as to when they will **jointly seek** court permission to keep the polls open late – so that every voice is heard.

Thank you for your consideration of these critical issues.