

**Field Hearing on Voting Rights and Election Administration in Arizona
Phoenix College - Bulpitt Auditorium**

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Written Testimony of

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To the House Subcommittee on Elections Administration:

Good morning. My name is Darrell Hill, and I am the Policy Director for the American Civil Liberties Union Foundation of Arizona (ACLU of Arizona). With over 65,000 members, activists, and supporters statewide, the ACLU of Arizona works across party, racial, gender, and economic lines to advance its mission of defending the principles of liberty and equality embodied in our Constitution. For over 50 years, the ACLU of Arizona has worked in courts, legislatures, and communities to preserve, protect, and promote the legal and human rights of all Arizonans.

The right to vote is frequently described as the right that is preservative of all others. We are not truly free without self-government, which entails a vibrant participatory democracy in which every voice can be heard. Today I'm going to highlight four areas of concern with voting rights in Arizona. Failures to advance and protect voting rights in these areas have a particularly negative effects on low-income communities, people of color, and persons who are differently-abled.

I. Arizona Improperly Limits Access to the Ballot and to the Polls.

Prior to the Supreme Court's decision in *Shelby County v. Holder*, Arizona was covered under Section 5 of the Voting Right Act's preclearance requirements because of the state's long history of discrimination against Latino, Native American and Black voters. Like many jurisdictions that were previously required to seek preclearance under Section 5, Arizona has recently passed new laws and regulations that are intentionally designed to restrict minority communities' access to the ballot and to the polls.¹

In 2016, the Arizona legislature enacted H.B. 2023, which makes the collection of signed and sealed absentee ballots a class 6 felony unless performed by a family

¹ See H.B. 2023, 52nd Ariz. Legis. 2nd Reg. Sess. (2016) (codified as amended at A.R.S. § 16-1005) (Prohibits ballot harvesting); S.B. 1090, 54th Ariz. Legis. 1st Reg. Sess. (2019) (codified as amended at A.R.S. §§ 16-246, 16-411, 16-542, and 16-549) (Restriction of emergency early voting opportunities); S.B. 1072, 54th Ariz. Legis. 1st Reg. Sess. (2019) (codified as amended at A.R.S. §§ 15-411 and 16-542) (Restriction of early voting opportunities); S.B. 1451, 54th Ariz. Legis. 1st Reg. Sess. (2019) (codified as amended at A.R.S. §§ 16-311, 16-341, 19-118, 18-121, 19-121.01, and 19-125) (Burdens volunteer ballot initiatives).

member, household member, caregiver, or mail carrier. H.B. 2023 represents a substantial step-backwards in efforts to expand ballot access to all Arizonans. Activists, community groups, and friendly neighbors can now face criminal penalty simply for helping members of their community vote, even where there are no allegations of fraud or tampering. H.B. 2023 burdens communities that have traditionally relied on ballot collection, such as the elderly, differently-abled, Native American, and Latino communities, by preventing them from casting a ballot in the manner that is easiest for them. The law also unfairly impinges on the rights of activists, community groups, and neighbors to participate in our democracy because the law threatens people with hefty fines and jail time simply for trying to assist their community.

During the 2019 Arizona legislative session we saw renewed attacks on Arizonans right to vote including efforts to purge voting rolls, criminalize paid signature collection, and to prohibit voters from returning ballots they received in the mail, in-person.² None of these provisions sought to expand access to the ballot or increase voter participation. Rather, they represent attempts to make voting and participating in our democracy more difficult.

Two new laws passed by our legislature and signed by Arizona Governor Doug Ducey, S.B. 1072 and S.B. 1090,³ place new voter identification requirements on early and emergency voting. Voter ID requirements disproportionately and unfairly impact low-income voters, minority voters, senior citizens, voters with disabilities, and others who do not have a photo ID nor the money to acquire one. According to research by the Brennan Center, approximately 11% of all voting-eligible adults, have no government-issued identification.⁴ Elderly, minority and low-income citizens are far less likely to have photo identification, such as a driver's license or state-issued ID card, than other citizens.⁵ Indeed, 25% of black-Americans of voting age lack a driver's license or state-issued ID card compared to just 8% of white-Americans.⁶ Voter impersonation fraud—the only type of fraud that ID requirements would prevent—is virtually nonexistent in Arizona and across America. We have a constitutional right to vote. Voter ID laws restrict access to the voting booth while doing nothing to protect against voter or election fraud. Rather than putting hurdles in the way of voters, lawmakers should be working to ensure that every eligible voter can vote, and that every vote is counted.

² See S.B. 1188, 54th Ariz. Legis. 1st Reg. Sess. (2019) (requiring the removal of persons from the early voting list if they fail to vote in **any** two consecutive elections); H.B. 2616, 54th Ariz. Legis. 1st Reg. Sess. (2019) (making it a crime to receive financial compensation to register people to vote); S.B. 1046, 54th Ariz. Legis. 1st Reg. Sess. (2019) (prohibiting persons who receive a ballot by mail from dropping the ballot off at a polling location on or before election day).

³ S.B. 1090, 54th Ariz. Legis. 1st Reg. Sess. (2019) (codified as amended at A.R.S. §§ 16-246, 16-411, 16-542, and 16-549) (Restriction of emergency early voting opportunities); S.B. 1072, 54th Ariz. Legis. 1st Reg. Sess. (2019) (codified as amended at A.R.S. §§ 15-411 and 16-542) (Restriction of early voting opportunities)

⁴ Brennan Center for Justice, *Citizens Without Proof* (November 2006), [available online at https://www.brennancenter.org/page/-/d/download_file_39242.pdf](https://www.brennancenter.org/page/-/d/download_file_39242.pdf).

⁵ *Id.*

⁶ *Id.*

Arizona has also experienced a rising tide of poll closures which has led to voter disenfranchisement and increased barriers to voting for the elderly, disabled, rural communities, Native American communities, and inner-city communities. A study by the Leadership Conference on Civil and Human Rights, based on 757 of the approximately 800 counties that were previously covered by Section 5, found that 298 counties—or about 39% of those surveyed—had permanently closed 1688 voting locations in less than 7 years since *Shelby*.⁷ 320 of those polling places closures were in Arizona alone.⁸

During Arizona’s Presidential Preference Election (PPE) of 2016, Maricopa County residents witnessed first-hand the effect of irresponsible poll closures. For the PPE, election officials opened only 60 polling locations, down from 403 in 2008, a nearly 85% decline.⁹ As the plaintiffs in *Feldman v. Reagan*¹⁰ explained in their complaint, low-income and minority communities bore the brunt of the impact:

In primarily Anglo communities like Cave Creek, there was one polling place per 8,500 residents. In Phoenix, a majority-minority city where 40.8 percent of its 1.5 million residents are Hispanic, there was only one polling place allocated per 108,000 residents. A wide swath of predominantly minority and lower-income areas in west Phoenix and east Glendale, along with south Phoenix, were particularly lacking in polling sites compared with 2012. Poorer areas of central Mesa lacked polling sites as well, as did south Avondale and much of central Glendale. Arizona State Senator Martin Quezada’s predominately Hispanic district only had one polling location. As a result, in this and in other predominately Hispanic parts of the city, not only did people wait well into the night to vote, but Board member Steve Gallardo admitted that “minorities and low-income families may have had to drive a lot further, and had less overall access to voting centers.”¹¹

The reduction in polling places in metro Phoenix created long lines at polling centers across the metropolitan area, forcing some voters to wait in voting lines for nearly five hours *after* polls closed. Election officials must make sure that polling locations are accessible to all voters, that there are enough polling locations to orderly accommodate all persons who want to vote and that voting centers and/or polling locations are equitably distributed across communities so that no person is disenfranchised due to their income, race, or disability-status.

Arizona has also lagged in providing language assistance to non-English speaking citizens who seek to participate in the voting process. 12 of Arizona’s 15 counties are

⁷ *Polling Place Closures and the Right to Vote*, The Leadership Conference Education Fund, p. 12, (September 2019), available online at <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Complaint, *Feldman v. Reagan*, 2016 WL 1469869 (D.Ariz.), available online at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Complaint041516.pdf>.

¹¹ *Id.* at p. 29.

covered under Section 203 of the Voting Rights Act, which requires covered jurisdictions to provide minority language assistance in the registration and voting process if the number of non-English speakers in a community reaches a certain threshold.¹² On November 18, 2018, the Navajo Nation and tribal members filed a complaint against the Secretary of State and elections officials in three counties, alleging that the defendants' failure to provide sufficient language assistance, in-person early voting locations, and voter registration locations on the Navajo Indian Reservation resulted in absentee ballots cast by tribal members being rejected in the 2018 election and the state's continued failure to follow federal law will have a discriminatory impact on tribal members' voting rights in the future.¹³ In addition, many state agencies required to perform voter registration functions under Section 7 of the National Voter Registration Act (NVRA) are not providing language assistance in accordance with Section 203 jurisdictions for voter registration activities. In order to obtain equality, uniformity, and efficiency in Arizona's voting process, the state must work with agencies within counties covered by Section 203 to ensure that they meet their language assistance obligations.

II. Arizona's Dual Voter Registration and Two-Tiered Voting Systems Prevent Eligible Voters from Voting.

In 2004 Arizona voters passed Proposition 200, an initiative that required Arizona residents to provide documentary proof of citizenship when registering to vote for state and federal elections.¹⁴ In 2013, the United States Supreme Court ruled that the NVRA's requirement that all states "accept and use" the uniform Federal Form for registration in federal elections¹⁵ preempted Proposition 200, and held Arizona could not require documentary proof of citizenship for federal elections.¹⁶ Shortly thereafter, Arizona implemented the current dual voter registration and two-tiered voting systems.

Arizona's current bifurcated voting system was sold as an effort to limit alleged voter fraud from non-citizens. Unfortunately, the effects of Arizona's dual registration and two-tiered voting system have been to deny United States citizens the right to vote in state and federal elections. Under Arizona law, a voter who registers in Arizona using the federal form and attests that he or she is a United States citizen, does not have to provide documentary proof of citizenship, but may only vote in federal elections. In contrast, a voter who registers with the state form must provide documentary proof of citizenship. If he or she does so, the voter is registered as a full ballot voter. However, a registrant who does not provide documentary proof of citizenship when using the state form is not registered for state or federal elections. Voters get different ballots depending on whether they registered using the state or federal form. A voter that uses the federal form receives a ballot with only elections for federal office. In contrast, a

¹² *Voting Rights in Arizona: An Advisory Memorandum of the Arizona Advisory Committee to the U.S. Commission on Civil Rights*, U.S. Commission on Civil Rights, p.3 (July 2018), available online at <https://www.usccr.gov/pubs/2018/07-25-AZ-Voting-Rights.pdf>

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¹⁴ A.R.S. § 16-166(F); A.R.S. § 16-152(A)(23).

¹⁵ 52 U.S.C. § 20505(a)(1).

¹⁶ See *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2013).

voter that successfully registers using the state form is a full ballot voter, entitling him or her to vote in both state and federal elections.

Arizona's registration and voting process is complicated, difficult for voters to navigate, difficult for election officials to implement, a colossal waste of resources, and most importantly, has severely impacted the ability of eligible voters to cast a ballot. A federal district court found "two-and-a-half years after Arizona's law was implemented, [election officials] had blocked at least 31, 550 applicants from registering."¹⁷ Analysis by the Brennan Center for Justice revealed that due to the bifurcated voting system, "tens of thousands [of eligible voters] were prevented from registering in Arizona."¹⁸ A 2017 report by current Maricopa County Recorder Adrian Fontes found that at least 17,000 registration forms rejected for lack of documentary proof of citizenship were filled out by U.S. citizens.¹⁹

Requiring voters to provide documentary proof of citizenship exacerbates existing voting and registration discrepancies between high- and low-income voters and between white and minority communities, while also creating new sources of inequality between men and women voters. The financial costs of obtaining documents to demonstrate citizenship can be burdensome and prohibitive. An Arizona birth certificate cost \$20;²⁰ fees in other states can range even higher.²¹ A passport application costs \$135.²² A replacement naturalization certificate costs \$555.²³ Besides these fees, applicants may be charged additional costs to demonstrate their identity or to prove citizenship to the supplying agency.

According to a nationwide survey conducted by the Brennan Center, 7% of eligible voters surveyed do not have ready access to citizenship documents, such as a U.S. passport, birth certificate, or naturalization certificate.²⁴ "The rate is twice as high among citizens earning less than \$25,000 per year."²⁵ Requiring documentary proof of citizenship to register to vote is particularly hard on women. Only 48% of voting-age

¹⁷ Ian Vanderwalker, *Analysis: The Effects of Requiring Documentary Proof of Citizenship to Register to Vote*, Brennan Center for Justice, available online at <https://www.scribd.com/document/354176622/The-Effects-of-Requiring-Documentary-Proof-of-Citizenship#download>.

¹⁸ *Id.*

¹⁹ Rebekah Sanders, *Former Arizona Attorney General: County Recorder Fontes' Voter-Registration Fix is 'Reasonable,'* THE ARIZONA REPUBLIC (May 3, 2017), available online at <https://www.azcentral.com/story/news/politics/elections/2017/05/04/fontes-lowers-number-potential-citizens-disenfranchised/310438001/>.

²⁰ *A.A.C. § R9-19-105* (2016).

²¹ E.g. *Fees*, Michigan Dep't. of Health and Human Services, https://www.michigan.gov/mdhhs/0,5885,7-339-71551_4645_4939-13695--,00.html (last visited Sept. 27, 2019) (fee for birth certificate \$34.00).

²² *Passport Services Available at Several Arizona Post Office Locations*, USPS (March 9, 2018), available at https://about.usps.com/news/state-releases/az/2018/az_2018_0309.htm.

²³ *Replace My Naturalization Certificate or Certificate of Citizenship*, U.S. Citizenship and Immigration Services, https://my.uscis.gov/exploremyoptions/lost_stolen_certificate (last updated January 11, 2019).

²⁴ Brennan Center for Justice, *Citizens Without Proof* (November 2006), available online at https://www.brennancenter.org/page/-/d/download_file_39242.pdf.

²⁵ *Id.*

women *with access* to their U.S. birth certificates have birth certificates with their current legal names, while only 66% of voting-age women have any type of citizenship document with their current legal name.²⁶ “In other words, over forty million voting-age women have no document proving citizenship with their current legal names.”²⁷ I have personally worked with a woman who was unable to successfully register to vote in Arizona, despite having required citizenship documentation, because the citizenship documentation did not have the same name as her government-issued identification.

In addition, Arizona is the only state in the country that requires overseas voters, including military personnel, to provide documentary proof of citizenship when registering to vote for federal elections. Under Arizona’s election rules, registrants who use the Federal Post Card Applications (FPCA) or the Federal Write-In Absentee Ballots (FWAB) must provide documentary proof of citizenship to register for federal elections.²⁸ It is my belief these rules violate federal law. Arizona may not prevent overseas voters who use either the FPCA or FWAB from registering to vote in federal elections for failure to provide documentary proof of citizenship. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) requires each state to “accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election.”²⁹ The law does not allow a state to require voters provide information beyond what is required by statute to register to vote.

The United States Supreme Court has already ruled that almost identical language in the NVRA precludes “Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself.”³⁰ UOCAVA’s statutory language of “accept and process” is substantially similar to the “accept and use” language the Supreme Court held required Arizona to accept the general federal forms for applicants seeking to register in federal elections.³¹ Indeed, the requirement that a state “process” valid voter registration and absentee ballot applications is more specific than the generic “use” language that the Supreme Court held required Arizona to accept the generic federal form. Arizona’s current registration rules must be revised to protect the right of overseas military personnel and other voters who use the FPCA or FWAB forms to register to vote. Persons who go abroad and dedicate their lives to serving our nation should not be denied the opportunity to vote at home.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *State of Arizona Elections Procedure Manual*, Arizona Secretary of State’s Office, p. 70 (2018), available online at <https://www.verifiedvoting.org/wp-content/uploads/2018/05/2018-0330-State-of-Arizona-Elections-Procedures-Manual.pdf>.

²⁹ 52 U.S.C.A. § 20302.

³⁰ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 133 S. Ct. 2247, 2260, 186 L. Ed. 2d 239 (2013); *see also Gonzalez v Arizona*, No. CV6 06-01268-PHX-ROS (D.Ariz.) (Sept. 11, 2013) (enjoining the State from requiring that any registrant “provide more information than that required by the Federal Form.”).

³¹ *Id.* at 1254.

The state should not be in the business of making it harder for citizens to vote. Every Arizonan should be able to register and vote without having to navigate through a bureaucratic maze. Arizona's dual registration and bifurcated voting systems must be reformed so that the state no longer deprives eligible voters the opportunity to vote.

III. Arizona's Felony Disenfranchisement Crisis.

Not only does the United States continue to lead the world in the rate of incarcerating its citizens, it is one of the world's strictest counties in terms of denying citizens the right to vote due to conviction for a crime.³² Over six million Americans are currently disenfranchised due to a felony conviction.³³

Even in a nation addicted to incarceration and disenfranchisement, Arizona stands out. Arizona has the 8th highest rate of felon disenfranchisement in the nation.³⁴ Over 220,000 possible voters, or 4.25% of Arizona's voting age population, are ineligible to vote due to a felony conviction.³⁵ African-Americans are disproportionately harmed by Arizona's felon disenfranchisement laws, with more than 1 in 10 black adults ineligible to vote in Arizona.³⁶ Arizona's rate of felon disenfranchisement has nearly tripled over the last 25 years.³⁷ Over 115,000 of those ineligible to vote in Arizona due to a felony conviction have completed the full length of their sentence, probation and/or parole.³⁸

Arizona has one of the most complex processes in the nation for voter rights restoration. Several aspects of the process are prescribed by statute, but others are left to the discretion of state and county election officials. The ACLU frequently hears complaints from the public that state and county elections officials cannot answer basic questions about the voting right restoration process.

Restoration of voting rights should be automatic, either at release from incarceration or upon completion of sentence. With respect to the former (post-incarceration disenfranchisement), states should pass simple legislation (or, where

³² ACLU, *Out of Step with the World: An Analysis of Felony Disenfranchisement in the US and Other Democracies* (May 2006), available online at <http://felonvoting.procon.org/sourcefiles/aclu-felon-voting-report-2006.pdf>; ACLU of Florida, *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States* (September 2013), available online at <https://www.sentencingproject.org/wp-content/uploads/2015/12/Felony-Disenfranchisement-Shadow-Report-ICCPR.pdf>.

³³ See Brent Staples, *The Racist Origins of Felon Disenfranchisement*, N.Y. TIMES (Nov. 18, 2014), available online at https://www.nytimes.com/2014/11/19/opinion/the-racist-origins-of-felon-disenfranchisement.html?_r=0; Dale Ho, *Virginia Needs to Fix Its Racist Voting Law*, N.Y. TIMES (July 19, 2016), available online at <http://www.nytimes.com/2016/07/19/opinion/virginia-needs-to-fix-its-racist-voting-law.html>.

³⁴ The Sentencing Project, *6 Million Lost Voters: State- Level Estimates of Felony Disenfranchisement, 2016* (Oct. 6, 2016), available online at <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

necessary, a state constitutional amendment) providing that the right of an individual who is a citizen of the United States to vote in any election shall not be denied or abridged because that individual has been convicted of a criminal offense, unless such individual is serving a felony sentence in a correctional institution or facility at the time of the election.³⁹

In addition, states should no longer use costly fines and fees as barriers to the restoration of voting rights. Nine states directly require citizens to satisfy all legal financial obligations (LFOs), including fines, fees, and interest, accrued at trial or during incarceration, before they may regain their right to vote.⁴⁰ In another 21 states, LFOs are a de facto barrier to voting, primarily by extending probation or parole until LFOs are satisfied.⁴¹ These practices criminalize poverty and exacerbate the racially disparate impact of felony disenfranchisement. States should eliminate repayment of legal financial obligations as a condition for restoration.

Arizona's existing restoration rules are confusing, and act as a barrier to persons who are seeking to restore their right to vote. At the very least, Arizona should provide clear notice of the requirements and processes for restoration to each returning citizen, including in circumstances where state law deems someone ineligible to vote due to a conviction in federal court or in another state.

Conclusion

Voting is a fundamental right and a cornerstone of our democracy. As the United States Supreme Court has said, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.”⁴² Voting brings us together as Americans by fostering a sense of civic engagement and community. When exercising our right to vote we are all equal — whether young or old, rich or poor — and the one time when we all have the same say.

Thank you again for offering me the opportunity to testify in person and to submit this written testimony. I would like to conclude by offering my support for automatic voter registration and same day registration. Under automatic voter registration systems, when a citizen provides basic personal information to any government agency, the information is sent to state or local election officials without the need to go to a voter registration office or fill out a separate form. Nine states and the District of Columbia have already approved AVR, and 32 states introduced AVR

³⁹ Language is modeled on the federal Democracy Restoration Act, H.R.1459 — 114th Congress (2015-2016), available online at <https://www.congress.gov/bill/114th-congress/house-bill/1459/text>.

⁴⁰ Allyson Fredericksen & Linnea Lassiter, *Disenfranchised by Debt: Millions Impoverished by Prison, Blocked from Voting*, Alliance for a Just Society, p. 13-14 (March 2016), available online at <http://allianceforajustsociety.org/wp-content/uploads/2016/03/Disenfranchised-by-Debt-FINAL-3.8.pdf>.

⁴¹ *Id.*

⁴² *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

proposals in 2017.⁴³ Same day voter registration eliminates the need for advance registration by permitting an eligible voter to verify identity, register, and cast a ballot at the same time on Election Day or during an early voting period. Same day registration streamlines the voting process, eases the burden on voters and election officials, and increases voter participation.

Arizona should strive to make our democracy a beacon to the world. To do so, we must eliminate practices that discourage voter participation and have the effect of limiting registration rates for communities of color, low-income Arizonans, and other communities. Thank you for the opportunity to discuss these important matters with you.

Sincerely,

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⁴³ *Automatic Voter Registration*, Brennan Center for Justice (July 10, 2019), available at <https://www.brennancenter.org/analysis/automatic-voter-registration>.