

VOTING RIGHTS AND ELECTIONS
ADMINISTRATION IN ARIZONA

HEARING
BEFORE THE
SUBCOMMITTEE ON ELECTIONS
COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

OCTOBER 1, 2019

Printed for the use of the Committee on House Administration



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CONTENTS

OCTOBER 1, 2019

	Page
Voting Rights and Election Administration in Arizona	1
OPENING STATEMENTS	
Chairwoman Marcia L. Fudge	1
Prepared statement of Chairwoman Fudge	4
WITNESSES	
Hon. Jonathan Nez, President, The Navajo Nation	6
Prepared statement of Hon. Nez	9
Hon. Stephen Roe Lewis, Governor, Gila River Indian Community	17
Prepared statement of Hon. Lewis	20
Patricia Ferguson-Bohnee, Professor of Law, Indian Legal Clinic, Arizona State University	38
Prepared statement of Ms. Ferguson-Bohnee	41
Hon. Lorena C. Van Assche, Chair, Arizona State Advisory Committee, U.S. Commission on Civil Rights	50
Prepared statement of Hon. Van Assche	52
Montserrat Arredondo, Table Director, One Arizona	59
Prepared statement of Ms. Arredondo	61
Alex Gulotta, Arizona State Director, All Voting Is Local	63
Prepared statement of Mr. Gulotta	65
Darrell L. Hill, Policy Director, ACLU of Arizona	70
Prepared statement of Mr. Hill	72
Hon. Michelle Ugenti-Rita, State Senator, State Senate of Arizona	81
Prepared statement of Hon. Ugenti-Rita	83
SUBMISSIONS FOR THE RECORD	
League of Women Voters of Arizona, statement	103
Arizona Advisory Committee, U.S. Commission on Civil Rights, Voting Rights in Arizona Report July 2018, statement	108
Patricia Ferguson-Bohnee, Professor of Law, Indian Legal Clinic, Arizona State University, History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression, statement	126
Arizona Advocacy Foundation, Arizona Shelby Response Project: Modernizing Elections and Maximizing Voter Participation, statement	172
Patricia Ferguson-Bohnee, Professor of Law, Indian Legal Clinic, Arizona State University, Native Vote—Election Protection Project 2016 Election Report, statement	200
Adrian Fontes, Maricopa County Recorder, statement	197

VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN ARIZONA

TUESDAY, OCTOBER 1, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:03 a.m., at Phoenix College, Bulpitt Auditorium, 1202 W. Thomas Road, Phoenix, Arizona, Hon. Marcia L. Fudge (Chair of the Subcommittee) presiding.

Present: Representatives Fudge, Butterfield, and Aguilar.

Also Present: Representatives Grijalva, Stanton, Gallego, and Lesko.

Staff Present: Jamie Fleet, Staff Director; Eddie Flaherty, Chief Clerk; Sean Jones, Legislative Clerk; Daniel Taylor, General Counsel; Peter Whippy, Communications Director; Veleter Mazyck, Chief of Staff to Ms. Fudge; Sarah Nasta, Counsel - Elections; Courtney Parella, Minority Communications Director; Jesse Roberts, Minority Counsel; and Cole Felder, Minority General Counsel.

Chairwoman FUDGE. The Subcommittee on Elections of the Committee on House Administration will come to order.

I thank the Members of the Subcommittee, Representatives Butterfield and Aguilar, colleagues from the House, as well as our witnesses and those in the audience for being here today.

I ask unanimous consent that all Members have five legislative days to revise and extend their remarks and that any written statements be made part of the record.

Hearing no objection, so ordered.

I ask unanimous consent that Members Grijalva, Stanton, and Lesko be invited to sit on the dais for the Subcommittee hearing today.

Hearing no objection, so ordered.

Good morning. My name is Marcia Fudge, and I am the Chair of the Subcommittee on Elections. I want to begin by thanking Phoenix College of Maricopa County Community College for their hospitality and assistance in hosting this field hearing.

I again thank my colleagues, our witnesses, Tribal leaders, and the people of Arizona for joining us here today. I also thank my distinguished colleague, Congressman Gallego, for so warmly welcoming us to his district, and he will be joining us shortly, as well as my colleagues, Congressmen Stanton, Grijalva, and Lesko for welcoming us to Arizona as we continue this important work.

We are here today to examine the state of voting rights and election administration in Arizona. Since the beginning of the 116th Congress, this Subcommittee has been holding field hearings across the country convening forums to hear from voting and election advocates, experts, community leaders, litigators, and voters about the state of voting rights and the election administration in their communities.

The right to vote is sacred, and as Members of Congress, we take our responsibility to protect access to the ballot very seriously. We have been listening closely and collecting testimony regarding the wide range of methods of voter suppression and discrimination being deployed across the nation. Today, we are here to learn first-hand from Tribal leaders, voting rights advocates, and litigators about their experiences exercising the right to vote in the State of Arizona.

Protecting the right to vote is fundamental to the health of our democracy. The Voting Rights Act of 1965 was intended to protect the right to vote in every single corner of the United States. Each of us should be concerned about the erosion of such a fundamental law.

Prior to 2013, Arizona was one of nine States fully covered by the preclearance requirements of Sections 4(b) and 5 of the Voting Rights Act. Voting changes in Arizona had to be evaluated for their potential discriminatory impact and were subject to review by the Department of Justice. But since the Supreme Court's decision in *Shelby County v. Holder*, voters in Arizona have seen numerous changes to voting without evaluation of their potential to discriminate.

Since 2012, Arizona has closed 320 polling stations in 13 of its 15 counties. Such closures pose access to voting challenges and may have a disparate impact on communities of color. The highest count of poll closures took place in Maricopa County, which is 31 percent Latino, with 117 closures. During the March 2016 Presidential primary, there were reports that voters in Maricopa County waited in lines as long as 5 hours to cast their ballot.

Arizona has a history of failing to protect the right to vote for Native Americans. Although Native Americans gained the right to vote in 1924, it was not until 1948 that Native Americans gained the franchise in Arizona. And still, for years, the Native American community continued to face discriminatory poll taxes, literacy tests, and other forms of disenfranchisement in Arizona.

We must ensure all Native Americans and other language minorities have access to the translated materials and language assistance they need to cast their vote. In addition, the move towards vote by mail and the attempt to outlaw ballot collection raises concerns that Native Americans and others with limited ability to access a polling location or mail service will be disenfranchised.

Further, although the Supreme Court held in 2012 that requiring proof of citizenship to register to vote is inconsistent with the National Voter Registration Act, Arizona still moved to require proof of citizenship when individuals registered to vote in State and local elections, although the Federal voter registration form does not. Native American voters and other minority communities are less likely to have the required ID.

These are just a few examples of hurdles faced by Arizona's voters. It is critical to note that Chief Justice Roberts himself said, "voting discrimination still exists, no one doubts that." The Chief Justice argued Congress needs to present a more up-to-date record of the prevalence of voting discrimination in order to reinstate the critical protections of Section 4(b) of the Voting Rights Act.

It is critical we examine the state of voting rights in America and build a true contemporaneous record of ongoing discrimination and barriers to voters, and that is why we are here today. It is clear there is much work to be done.

[The statement of Chairwoman Fudge follows:]

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JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
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JEN DAULBY, MINORITY STAFF DIRECTOR

Chairwoman Marcia L. Fudge Voting Rights and Election Administration in Arizona Opening Statement

Good morning. My name is Marcia Fudge and I am the Chair of the Subcommittee on Elections. I want to begin by thanking Phoenix College of Maricopa County Community College for their hospitality and assistance in hosting this field hearing. I again thank my colleagues, our witnesses, Tribal leaders, and the people of Arizona, for joining us here today. I also thank my distinguished colleague, Congressman Gallego, for so warmly welcoming us to his district, as well as my colleagues, Congressman Stanton, Chairman Grijalva, and Congresswoman Lesko for welcoming us to Arizona as we continue this important work.

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Protecting the right to vote is fundamental to the health of our democracy. The Voting Rights Act of 1965 was intended to protect the right in every corner of the United States. Each of us should be concerned by the erosion of such a fundamental law. Prior to 2013, Arizona was one of nine states fully covered by the preclearance requirements of Sections 4(b) and 5 of the Voting Rights Act. Voting changes in Arizona had to be evaluated for their potential discriminatory impact and were subject to review by the Department of Justice. But since the Supreme Court's decision in *Shelby County v. Holder*, voters in Arizona have seen numerous changes to voting without evaluation of their potential to discriminate.

Since 2012, Arizona has closed 320 polling stations in 13 of its 15 counties. Such closures pose access-to-voting challenges and may have a disparate impact on communities of color. The highest count of poll closures took place in Maricopa County, which is 31 percent Latino, with 117 closures. During the March 2016 presidential primary, there were reports that voters in Maricopa County waited in lines as long as five hours to cast a ballot.

Arizona has a history of failing to protect the right to vote for Native Americans. Although Native Americans gained the right to vote in 1924, it was not until 1948 that Native Americans gained the franchise in Arizona. And still, for years the Native American community continued to face discriminatory poll taxes, literacy tests, and other forms of disenfranchisement in Arizona.

We must ensure all Native Americans and other language minorities have access to the translated materials and language assistance they need to cast their vote. In addition, the move towards vote-by-mail and the attempt to outlaw ballot collection, raises concerns that Native Americans and others with limited ability to access a polling location or mail service will be disenfranchised.

Further, although the Supreme Court held in 2012 that requiring proof of citizenship to register to vote is inconsistent with the National Voter Registration Act, Arizona still moved to require proof of citizenship when individuals register to vote in state and local elections, although the federal voter registration form does not. Native American voters and other minority communities are less likely to have the required ID. These are just a few examples of hurdles faced by Arizona's voters.

It is critical to note that Chief Justice Roberts himself said QUOTE Voting discrimination still exists; no one doubts that END QUOTE. The Chief Justice argued Congress needed to present a more up-to-date record of the prevalence of voting discrimination in order to reinstate the critical protections of Section 4(b) of the Voting Rights Act. It is critical we examine the state of voting in America and build a true contemporaneous record of ongoing discrimination and barriers to voting. That is why we are here today.

It is clear there is much work to be done.

Chairwoman FUDGE. I will now introduce our witnesses for our first panel. We have Jonathan Nez, who is the President of Navajo Nation, and Stephen Roe Lewis, who is the Governor of Gila River Indian Community.

I thank you both gentlemen for being here. You will see a lighting system in front of you. When you begin, the light will be green. You will have five minutes. When you see the light turn yellow, that means you have one minute remaining. When you see the red light, that means please try to wrap up as quickly as possible. Thank you very much.

Mr. Nez, the floor is yours. You have five minutes.

STATEMENTS OF THE HONORABLE JONATHAN NEZ, PRESIDENT, THE NAVAJO NATION; AND THE HONORABLE STEPHEN ROE LEWIS, GOVERNOR, GILA RIVER INDIAN COMMUNITY

STATEMENT OF THE HONORABLE JONATHAN NEZ

Mr. NEZ. Good morning, Madam Chairwoman, and Members of the Subcommittee. And also, greetings to my friend here, Governor Lewis, from the Gila River Indian Community. With me in the audiences are Vice President of the Navajo Nation, Myron Lizer. And thank you for the opportunity to talk with you today on this very important topic.

The Navajo Nation covers a large area of northern Arizona, and many of our people still speak our Navajo, or Din, language. They live in rural areas of our homeland and travel many miles for basic services. These three areas are my focus today, while we can acknowledge there are many more issues we can talk about today or at future hearings.

Number one, language. Like many older Navajos, I speak both Navajo and English. I grew up as Navajo being my first language. Many of our older citizens speak Navajo as their primary language and are more comfortable talking to others in the Navajo language.

As I understand it, the Navajo language is covered under Section 203 of the Voting Rights Act. I also understand this requires that all election material provided in the English language must also be provided in Navajo.

The Navajo Nation continues to have issues with some of the counties and the State of Arizona providing sufficient translation services to Navajo voters in written material, on radio, and to in-person voters. We are working this out with the counties in our region, but there is still a lot of ground to cover.

The point I must make here, so we all understand each other, the Navajo Nation has always worked with the counties in our area, and we will continue to do so for the benefit of all our citizens, including these issues of translation and understanding of election issues. I do not want anyone to misunderstand and get the idea that the Navajo Nation and counties are continually at odds with each other. We all work for the people of northern Arizona.

Number two, rural living. The Navajo Nation covers 27,000 square miles in three States, just a bit smaller than Ohio, Madam Chairwoman, your home State. Our capital is in Window Rock, Arizona, and we have 110 chapters or local government centers.

When it comes time to vote on the Navajo Nation, in Navajo State and Federal elections, it is difficult for some of our membership due to the rural nature of our land. One example of rural living on the Navajo Nation is public transportation, which is available in most of the United States. There is no public transportation that allows for the pickup of individual citizens at their place of residence. This severely limits the transportation options for the elderly and disabled citizens. People are relying on relatives or friends for rides, especially in the more rural areas. In some parts of the nation, only 1 in 10 families own a vehicle, which further limits transportation options.

In addition, if there are Tribal elections on the same day as the State and Federal elections, an individual may be required to travel two separate locations in two separate communities to cast ballots on election day. This can lead to an individual spending many hours in 1 day driving and waiting in line to vote. I will cover this issue in a minute.

A related issue to rural living is mailing address. An individual's post office box location may be in a different State or county than the individual's residency. A person may reside in Arizona, but their PO box and chapter house is in New Mexico, for example, Red Lake Chapter, Arizona, and Crystal Chapter, New Mexico, or reside in Utah and their PO box in Arizona, an issue for residents of Navajo Mountain Chapter, Utah. Some individuals reside in Navajo County, but their PO box and local chapter house is in Coconino County. The example is Bird Springs Chapter.

For those here, these locations are not familiar but are an issue for those living there, because a discrepancy in the State or county location between an individual's post office box and their physical residence leads to difficulties for individual Navajos in registering to vote. If the county cannot confirm the location of an individual's residence, it will reject their registration application.

Number three, traveling issues. In 2018, Apache County had only two early voting locations on the Navajo Nation in the southern part of the reservation. This resulted in community members from Teec Nos Pos Chapter located near the Utah border having to drive a 95-mile, one-way trip to vote early. This is like driving a two-lane road from Columbus to Cincinnati, less traffic but just as long. This is in contrast to off-reservation populations who had early voting locations in closer proximity to population centers and open for more days and longer hours. By limiting in-person early voting on the reservation, it hinders Navajo citizens from exercising the right to vote in their preferred manner.

In conclusion, an issue related to traveling is that the county precincts do not align with Navajo political subdivisions, the chapters, or local government centers, as I mentioned before. An individual's chapter house may be the polling location of a precinct, but because of where the individual lives in the chapter area, they are actually not in the same precinct that the chapter house is.

For instance, the Cameron Chapter directly north of Phoenix, about 200 miles, is not located in one precinct but is divided between several precincts. The residents of Cameron Chapter may be in the Bodaway-Gap precinct of Coconino County. If the individual works in Tuba City, the individual would have to take time off

work to vote at his or her chapter house for a Navajo election and drive to another precinct polling location in Bodaway-Gap to vote in State elections, for a trip total of 60 miles.

So in summary, there are many other issues we can talk about, but these three, language, rural area, traveling conditions are what I focus on today. And I appreciate the time extended to us for our testimony, and I stand ready for questions. Thank you.

[The statement of Mr. Nez follows:]

Written Testimony of Navajo Nation President Jonathan Nez

The Navajo Nation is one of the largest Indian Nations in the country with a population of over 300,000 citizens. It is incredibly vast, extending over 27,000 square miles and across three states: Arizona, New Mexico, and Utah. While the Navajo Nation's capital is located in Window Rock, Arizona, there are 110 subunits of government, called chapters, located throughout the Nation. The Navajo language is widely spoken by Navajo voters and enjoys coverage under Section 203 of the Voting Rights Act. The poverty rate on the Navajo Nation (38%) is more than twice as high as the poverty rate in the State of Arizona (15%). Voting on the Navajo Nation is difficult due to a lack of traditional addresses, the remote location of many of our communities, language barriers, and the lack of resources.

I. Non-Traditional Addresses and Remote Location is a Barrier for Navajo Nation Voters.

A majority of Navajo citizens residing on the reservation do not have traditional street addresses. Of the Navajo Nation's 110 chapters, about 70 of them do not have street names or numbered addresses, which adds up to at least 50,000 unmarked properties. While Arizona registration forms allow a space for an individual to draw a map location of their resident, these maps often do not allow for sufficient detail to properly locate the residence. This results in registers assigning voters to the wrong precincts. If a voter is placed in the wrong precinct, it can lead to longer travel times for the voter or to the County rejecting the ballot, if they determine the voter is voting in the wrong precinct. It can also result in the county not processing the voter registration form. In 2012, Apache County, Arizona purged 500 Navajo voters because their addresses were deemed "too obscure."

Due to the remote location and lack of traditional addresses on the Nation, many Navajo citizens must utilize P.O. Boxes to receive their mail. Because the Nation spans three states, three counties in Arizona, one county in Utah, and four counties in New Mexico, an individual's P.O. Box location may be in a different state or county than the individual's residence. A person may reside in Arizona but their P.O. Box and Chapter House is in New Mexico (i.e. Red Lake Chapter and Crystal Chapter) or reside in Utah and their P.O. Box in Arizona (Navajo Mountain Chapter). Some individuals reside in Navajo County but their P.O. Box and local Chapter House is in Coconino County. (i.e. Birdsprings Chapter). A discrepancy in the state or county location between an individual's P.O. Box and their physical residence leads to difficulties for individual Navajos in registering to vote. If the County cannot confirm the location of an individual's residence it will reject the registration application.

P.O. Boxes are usually shared by multiple family members. Multiple family members will utilize one box because some family members may not be able to afford their own P.O. Box. The sharing of P.O. Boxes by multiple individuals can lead to lost or delayed ballots and voter notifications, as one family may not provide the other individuals on the P.O. Box with their mail in a timely manner, if at all. Even with multiple family members on one P.O. Box, there are not enough P.O. Boxes to serve the community. The post office limits the number of people that can be listed on a P.O. Box, causing individuals who do share P.O. Boxes with their family to be removed from the box. Post offices on the Navajo Nation only have a limited number of P.O. Boxes available at each location. If an individual is not able to secure a P.O. Box, or is removed from their family box, they may have to travel 30 to 40 miles to the next closest post office. At times this can be in addition to the 30 miles they traveled to reach their local post office. Long travel times to P.O. Boxes makes checking the mail a hardship for individuals who are elderly or

disabled. It also results in individuals checking their mail less frequently. Some citizens are only able to check their P.O. box once a week or even as little as once every three to four weeks.

Some of these issues could be resolved if the counties had satellite offices in Navajo communities to assist Navajo voters in completing voter registration forms. Not only would this assist in correct precinct placement, but it would also improve access to voter registration. In 2018, voters who wanted to register to vote had limited options across the Nation. Some Navajo citizens are required to drive over 100 miles to register to vote.

II. The Move Towards Mail-In Ballots Hinders Voting on the Navajo Nation.

As Arizona, New Mexico, and Utah move towards mail-in voting, and away from in-person voting, as the primary means of voting, the issue of traditional addressing becomes more of a concern, as it becomes a significant hurdle for individuals in exercising their right to vote. In addition to the issues of a lack of traditional addressing and easily accessible P.O. Boxes, there are multiple issues surrounding the use of mail-in ballots on the Navajo Nation. First, Navajo individuals prefer in-person voting. There is a strong preference by Navajo citizens to cast their ballot in person. It is a time for the community to gather. Food is provided to voters who take the day to sit and talk with each other. For some people voting is the only time they see certain members of their community. This gathering for in-person voting is an incentive for people to vote on the Navajo Nation.

Second, there is a lack of language assistance provided to individuals who receive mail-in ballots. Translations of the ballot and instructions on how to complete the ballot in the Navajo language are not provided by mail. Coconino County provides language assistance if an individual with a mail-in ballot calls them. However, there is nothing provided in the mail-in ballot that informs the individual that this is an option. Rather the individual would just have to know to call

the County. When people do call the County for assistance with a mail-in ballot, it is usually an English speaking relative calling on behalf of their non-English speaking relative.

Third, mail-in ballots do not allow individuals the opportunity to receive in-person instructions on how to fill out the ballot. Even minor errors in completing the mail-in ballot, such as not signing the envelope, can result in the rejection of the ballot. In 2018 a number of individual ballots were rejected in Apache, Navajo, and Coconino because the envelope was not signed. The Navajo Nation brought litigation against these counties stating the lack of instruction provided to the individuals in Navajo on the signature requirement was a violation of the Section 203 of the Voting Rights Act, as well as a violation of the due process and equal protection clauses of the 14th Amendment.

Fourth, Arizona's Ban on "Ballot Harvesting" makes mail-in ballots that much less available to Navajo citizens. As discussed above it can be extremely hard for an individual to get their ballot to a post-office. This discussion does not even take into account the transportation issues many individuals on the Nation face. Many individuals rely on others to help them pick up and drop off mail. These individuals may be related by blood to the voter, or they may be a clan relation. They may also be a non-relation community member who happens to assist the individual at their house. The limitations placed on who can transport a ballot under Arizona law places the burden on low-income, isolated, elderly voters, who may not speak English as a first language, to find a way to get their ballot to a mail-box possibly as far as 30 miles away, in a timely manner.

III. Navajo citizens on the Nation are not provided the same opportunity that off-reservation individuals are to early vote.

In 2018, Apache County had only two early voting locations on the Navajo Nation in the southern part of the reservation. This resulted in community members from Teec-Nos-Pos Chapter,

located near the Utah border, having to drive a 95 mile one way trip to vote early. Coconino County had only one location on the Nation, in Tuba City. This resulted in community members from Coalmine Chapter having to travel 43 miles one way to vote early. Navajo County had multiple early voting locations on the Navajo Nation, however, these locations were open for couple hours each and moved around depending on the day. This is in contrast to the off-reservation population which had early voting locations in closer proximity to population centers and open for more days and longer hours. By limiting in-person early voting on the reservation, it hinders Navajo citizens from exercising their right to vote in their preferred manner.

IV. There is limited transportation options on the Navajo Nation.

There is no public transportation that allows for the pick-up of individual citizens at their place of residence. This severely limits the transportation options for elderly and disabled citizens. People are reliant on relatives or friends for rides, especially in the more rural areas. In some parts of the Nation, only one in ten families own a vehicle which further limits transportation options. In addition, if there are tribal elections on the same day as the state and federal elections, an individual may be required to travel to two separate locations, in two separate communities to cast ballots on election day. This can lead to an individual spending many hours in one-day driving and waiting in line to vote.

V. Language assistance continues to be an issue on the Navajo Nation.

The Navajo language is covered under Section 203 of the Voting Rights Act. This requires that all election material provided in the English language must also be provided in Navajo. The Nation continues to have issues with the counties and the State of Arizona providing sufficient translation services to Navajo voters in written materials, on radio, and to in-person voters. As

mentioned above, this issue is exacerbated in mail-in ballots, which resulted in the Nation filing its lawsuit against the counties after the 2018 election.

VI. The County precincts do not align with Navajo political subdivision, Chapters.

An individual's Chapter House may be the polling location of a county precinct, but because of where the individual lives in the Chapter may be assigned to a different county precinct. This causes confusion and results in voters casting ballots in the wrong precinct. Out of the three Arizona counties the Nation is located in, only one County (Navajo) allows for an individual to vote out of precinct on election day. Requiring voters to vote in precinct on election day may require them to make trips to multiple voting locations. An individual may have to vote at their Chapter House to vote in the Navajo elections and then drive to another to their County precinct voting location. This results in the individual having to drive to multiple locations to vote in Federal and Navajo elections. It causes confusion amongst the voters on where their polling location is. For example, two individuals went to vote at the Fort Defiance Chapter house in November 2018 to cast their ballots in the Navajo and Federal elections. While both individuals were members for Fort Defiance Chapter, because of the location of one of the women's residence, she was not allowed to cast her ballot of the Federal elections at Fort Defiance. Instead, she was instructed to drive to Window Rock to cast her ballot there, since that was her precinct's polling location. It is unclear if this woman took the time to do this. Another example, Cameron Chapter is not located in one county precinct, but is divided between several precincts. A resident of Cameron Chapter may be in the Bodaway-Gap Precinct of Coconino County. If the individual works in Tuba City, the individual would have to take time off work to vote at her Chapter House (26 miles) and then drive to the precinct polling location in Bodaway Gap (34 miles), for a trip total of 60 miles.

VII. ADA cases being brought by U.S. DOJ is affecting polling locations on the Navajo Nation.

The U.S. DOJ is entering into settlement agreements with counties in which the Navajo Nation is located. These settlements are entered into with any consultation of the Navajo Nation, and the Navajo Nation is not a party to the cases. It is not until after the settlements are signed that the Navajo Nation receives notice of the settlement.

The settlement requires the county to make sure all their polling places are ADA compliant. The Navajo Nation is not bound by the ADA and these settlements have the effect of applying a law it otherwise would not have to comply to its land. It also has had the effect of counties threatening to remove polling locations on the Nation, if the Nation cannot bring its structures into ADA compliance. This has caused a lot of local communities, who have limited funding, to worry about the loss of their polling locations. Some counties have tried to work with the local communities to come up with temporary solutions that do not require expensive structural changes. However, the temporary solutions are not meant to replace the ultimate goal of the settlement, which is to have only ADA compliant structures used as polling locations. In 2018, the Navajo Nation asked Coconino County for more early voting locations. One of the reasons the County gave for denying the Nation's request was its ADA settlement agreement with US DOJ. The County worried it could not provide these additional locations and be in compliance with the settlement agreement. A fear of these cases being filed has been brought up in discussions between the Navajo Nation and Navajo and Apache county, both of whom have cited it as a reason for not complying with the Nation's request for more voting locations.

VII. Conclusion and Recommendation

The Nation is currently working with the counties to try to provide more early polling locations on the Nation. In general, the Nation would like to see more in-person early voting opportunities for voters on the Nation, equal to those located off the reservation. These options should be highly publicized and provide translation services for voters. The Nation would like out of precinct voting across all of the counties so that individuals can vote at any polling location in the county. The Nation would like more resources dedicated to voter outreach and education. Most counties only have the funds to hire one outreach worker. This is insufficient to meet the needs of the residences of the Navajo Nation.

Lastly, the Nation would like to see Congress pass the Native American Voting Rights Act (NAVRA). NAVRA addresses a number of the concerns that have been raised in this testimony, such as providing voters adequate space on their voter registration application to identify the location of their residence. Many of the Nation's voting issues are based on policies passed at the county or State level. Since the counties policies governing voting on the Nation vary from county to county, it contributes to confusion amongst Navajo voters. NAVRA would provide much needed consistency in the administration of voting on the Navajo Nation. It would also honor the government-to-government relationship the Federal government has with the Navajo Nation.

Chairwoman FUDGE. Thank you very much, Mr. President. One thing I did neglect to tell you, this is being live-streamed, so at any point, you may be on a camera. So just to forewarn you, so that you are not like doing something silly when the camera comes on you.

Mr. Governor, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE STEPHEN ROE LEWIS

Mr. LEWIS. Thank you, Madam Chairwoman. [Speaking Akimel O'otham] I am Governor Stephen Roe Lewis of the Gila River Indian Community. It is an honor to welcome you to our O'otham, our traditional lands of the O'otham peoples. And Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee, thank you sincerely for the opportunity to testify on this important topic regarding voting rights and elections administration in Arizona.

The Indian Citizenship Act made Tribal members full United States citizens in 1924. Unfortunately, as we know, Tribal members across Indian Country are still fighting to secure and exercise their right to vote.

Across the country, Tribal members living on Indian reservations face unique voting challenges that individuals living elsewhere take for granted, and this is no different in Arizona. The Gila River Indian Community strives to address and tear down the barriers faced by the community's Tribal members and is actively involved in initiatives to increase voter turnout across our great reservation.

The community is comprised of the Akimel O'odham and the Pee-Posh Tribes, and has over 23,000 enrolled members, with approximately 12,000 of those members residing on the reservation. Our reservation is roughly 372,000 acres and located in south central Arizona in both Maricopa and Pinal Counties. The reservation is divided into seven political districts with five of those districts located in Pinal County and two located in Maricopa County.

A little bit about our history. In 1928, the community's Tribal members, Peter Porter and Rudolph Johnson, were denied the right to register to vote in Pinal County for two reasons: First, because the county did not believe that they resided within the State of Arizona since they lived on our reservation; second, because the county believed that as American Indians, Porter and Johnson remained wards of the Federal Government and that both they and the rest of American Indians in Arizona were not entitled to vote in Arizona elections for State and Federal officers.

Porter and Johnson litigated Pinal County's decision in the Arizona Supreme Court and lost, unfortunately. The Court agreed with the county that Porter and Johnson were, quote, "under guardianship," unquote, of the Federal Government and, therefore, not entitled to vote.

Tribal members living on reservations in Arizona were unable to vote until 1948, when the Arizona Supreme Court overturned its previous decision and recognized Tribal members' rights to vote in Arizona elections.

In 1948, only two States continued to disenfranchise voters: New Mexico and Arizona. Tribal members' rights to vote in Arizona may now be fully recognized under the law, but Tribal members con-

tinue to face barriers to voting. Within Indian Country, Tribal members are often turned away at the polls because of voter address issues, which combined with ineffective election administrators and unreliable precinct locations, foster voter and Tribal member distrust and disenfranchise in the voting process.

There are important address issues as well. Under current Arizona law, all persons voting in person on election day must provide identification that includes an address in order to receive a regular ballot. If the identification does not include the individual's photo, then the individual is burdened with providing additional documentation. In contrast, individuals who cast provisional ballots or vote early by mail or in person do not have to provide identification in order to receive their ballots.

Our community members generally prefer to vote in person on election day because voting by mail is difficult due to unreliable mail service on the reservation and issues related to their nontraditional addresses. The community's Tribal identification cards do not include addresses.

Also, individuals living on the Pinal County portion of the reservation do not have standard county street addresses, through no fault of their own. Many Tribal members do not even receive mail at their homes and pay for a United States Post Office box, which are only open during the week and for limited hours on Saturdays.

In 2012, voter identification laws were strictly enforced on the Pinal County portion of the reservation, and many community voters were turned away from the polls when their addresses did not match the voter rolls. In very few instances, voters were offered and allowed to cast provisional ballots despite not having an address on their Tribal identification document. The majority of these voters were denied ballots altogether. In Maricopa County, voters were turned away when the county ended up changing their voting precincts without effectively communicating these changes to voters.

Despite improvements, many Tribal members were again turned away at the polls in the 2016 election. Voter identification laws in Arizona and nontraditional Tribal addresses problems remain still a huge barrier for our community's voters, and unless remedied, the community expects that these problems will continue in the next election.

We have been trying to remedy this in certain ways. The community is working at a grassroots level to encourage and inform community members to participate in elections in partnership with Get Out the Vote. Our communications and public affairs office recently worked with GOTV and the National Congress of American Indians to produce video content to increase voter turnout among our community. These videos discuss the historic struggle to vote within Arizona and the need to increase the number of American Indian voters.

This past August, we hosted the Arizona Native Right to Vote Day celebration. Voting registration has increased since the 2016 election, but the community remains committed to further increasing registration numbers by the community's estimates. Only 58 percent of the voting age population is currently registered to vote, and more must be done.

Voting should not be hard to do. The community strives to carry on the legacy of Peter Porter, Rudolph Johnson, and so many other Tribal advocates who fought to secure the rights that American Indians in Arizona have today, including our veterans. Ira Hayes, one of the flag raisers in Iwo Jima, comes proudly. He is a native son of the Gila River Indian Community. And so we know there are Native veterans who have served in the highest levels across the United States. They fought for, and they sacrificed for, our right to vote as well.

So with that, thank you for this opportunity to tell the Gila River Indian Community story on voting history and what we need to change in the future.

Thank you, Madam Chairwoman.

[The statement of Mr. Lewis follows:]

TESTIMONY OF GOVERNOR STEPHEN ROE LEWIS
GILA RIVER INDIAN COMMUNITY
BEFORE THE
HOUSE OF REPRESENTATIVES COMMITTEE ON HOUSE ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
“VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN ARIZONA”

TUESDAY, OCTOBER 1, 2019

Chairperson Fudge, Ranking Member Davis, and distinguished Members of the Subcommittee, I want to thank you for holding this field hearing on Voting Rights and Elections Administration in Arizona. I am Stephen Roe Lewis, the Governor of the Gila River Indian Community (“Community”), which is a federally recognized Indian Tribe of over 22,000 tribal members, located near Phoenix, Arizona.

Enacted in 1924, the Indian Citizenship Act,¹ made tribal members full United States citizens. Since that historic turning point, each tribal government’s voting rights history has been different because of the particular circumstances of each tribal community’s Indian lands and the barriers imposed by the states in which each community is located. Overall, however, I can state that in my experience, tribal members across Indian Country still must fight to secure their right to vote. Generally, tribal members residing within the boundaries of an Indian reservation face unique voting challenges that individuals living in cities take for granted and this is no different in Arizona. The Community strives to address and tear down the barriers faced by its members and is actively involved in undertaking initiatives to increase voter turnout across the Gila River Indian Reservation (“Reservation”).

I. THE GILA RIVER INDIAN COMMUNITY AND ITS UNIQUE VOTING RIGHTS HISTORY

The Community is comprised of the Akimel O’otham and the Pee-Posh tribes, and has over 22,000 enrolled members. Approximately 12,000 of these members live on the Reservation, which is roughly 372,000 acres and located in south central Arizona in both Maricopa and Pinal Counties. The Reservation is divided into seven political districts with each district having representation on the Community Council based on the population of the district. Five districts are located in Pinal County and two districts are located in Maricopa County.

Arizona has the United States’ third-largest American Indian population, according to census figures.² American Indians in Arizona face a unique voting rights history and the Community is keenly aware of this struggle. This is because in 1928, the Community’s own tribal members, Peter Porter and Rudolph Johnson, were denied the right to register to vote in

¹ 43 Stat. 253.

² “In Arizona, Native Americans try to boost turnout: ‘Our ancestors couldn’t vote, but we can,’” Los Angeles Times (June 12, 2018) available at <https://www.latimes.com/nation/la-na-arizona-native-voting-20180612-story.html>.

Pinal County. The County recorder deemed Porter and Johnson to be unqualified for two reasons.³ First, because they resided on the Reservation and therefore, the County did not believe that they resided within the State of Arizona. Second, because the County believed that as American Indians, Porter and Johnson remained wards of the federal government and under Arizona law, American Indians in Arizona were not entitled to vote in Arizona elections for state and federal officers.

Porter and Johnson litigated Pinal County's decision by filing an original petition in the Arizona Supreme Court for a writ of mandamus, directing the County recorder to allow them to register to vote.⁴ On November 2, 1928 in *Porter v. Hall*, the Arizona Supreme Court agreed in part with the County recorder and ruled against the Community members.⁵ Although the Arizona Supreme Court held that both Porter and Johnson resided within the State,⁶ the court agreed with the County recorder that they were "under guardianship" of the federal government and thus, not entitled to vote.⁷ In determining the meaning of "under guardianship," the court reasoned, "[b]roadly speaking, persons under guardianship may be defined as those who, because of some peculiarity of status, defect of age, understanding, or self-control, are considered incapable of managing their own affairs, and who therefore have some other person lawfully invested with the power and charged with the duty of taking care of their persons or managing their property, or both."⁸ In the court's eyes, "this guardianship was founded on the idea that the Indians were not capable of handling their own affairs in competition with the whites, if left free to do so,"⁹ and that Indians had "not been emancipated from their guardianship" of the federal government.¹⁰

Tribal members residing on reservations in Arizona remained unable to vote in Arizona elections for state and federal officers until 1948, when the Arizona Supreme Court in *Harrison v. Laveen* overturned *Porter* to the extent that the court previously held that tribal members were unable to vote because they were persons under guardianship of the United States,¹¹ thereby recognizing tribal members' right to vote in Arizona. The case in *Harrison* involved tribal members who resided on the Fort McDowell Indian Reservation and were similarly turned away from registering to vote in Maricopa County. In *Harrison*, the court stated that it had "no hesitancy in re-examining and reconsidering the correctness of the legal principles involved [in *Porter v. Hall*] because the civil liberties of our oldest and largest minority group (11.5% of State's population) of whom 24,317 are over twenty-one years of age (1940 U.S. census) are involved, and it has ever been one of the great responsibilities of supreme courts to protect the civil rights of the American people, of whatever race or nationality, against encroachment."¹² At

³ *Porter v. Hall*, 34 Ariz. 308, 312 (1928).

⁴ *Id.* at 311.

⁵ *Id.* at 321, 332.

⁶ *Id.* at 321.

⁷ *Id.* at 324-32.

⁸ *Id.* at 323-24.

⁹ *Id.* at 325.

¹⁰ *Id.* at 330.

¹¹ *Harrison v. Laveen*, 67 Ariz. 337, 349 (1948).

¹² *Id.* at 341.

the time of the court's 1948 decision, only two states continued to disenfranchise American Indian voters -- New Mexico and Arizona.¹³ In rejecting the prior court's holding that the status of being an Indian brings a person under legal guardianship, the court held that, "to ascribe to all Indians residing on reservations the quality of being 'incapable of handling their own affairs in an ordinary manner' would be a grave injustice for amongst them are educated persons as fully capable of handling their affairs as their white neighbors."¹⁴

Tribal members' right to vote in Arizona may now be fully recognized under the law, but tribal members continue to face voting challenges when they attempt to exercise their right to vote. The Community and its leadership value the importance of voting and the unique struggles that American Indians have faced in exercising their rights at the polls in Arizona. With great appreciation and understanding of this historical backdrop, the Community is committed to empowering and engaging all tribal citizens to vote in tribal, state, and federal elections.

II. VOTING CHALLENGES

Within Indian Country, it is all too common that tribal members are turned away at the polls because of voter address issues and often, such issues are not easily resolved due to ineffective poll workers who are placed at precinct locations on reservations that are unknown to tribal voters or frequently change. Some of the Community's own tribal members have faced such difficulties because they lack a residential address and rely on non-traditional addresses, difficulties our tribal brothers and sisters in North Dakota know all too well and are currently battling in their State.¹⁵

Many individuals who attempt to use tribal identification cards face problems because their addresses do not match up to inaccurate poll address lists. Moreover, poll workers are not necessarily trained in a culturally appropriate manner to work within tribal populations and do not effectively help and inform tribal voters who may not know how to handle address issues, identification questions, or the protocol for casting provisional ballots. Such challenges are caused or exacerbated by voter intimidation and policies designed to suppress the votes of tribal members. Confusion and uncertainty at the polls create hurdles for elders, younger tribal members, and tribal members who may have particular language barriers. These challenges foster voter and tribal member distrust and disenfranchisement in the voting process and perpetuate a lack of interest and motivation to vote in elections.

A. Address Issues

In 2004, Arizona voters approved the Arizona Taxpayer and Citizenship Protection Act, also known as Arizona Proposition 200, which required voters to present evidence of United States citizenship prior to voting. In 2013, elements of Proposition 200 were overturned by the U.S. Supreme Court in *Arizona v. Inter-Tribal Council of Arizona, Inc.*,¹⁶ in which the Supreme

¹³ *Id.*

¹⁴ *Id.* at 348.

¹⁵ See *Brakebill v. Jaeger*, No. 18-1725 (8th Cir. 2019) and more information at "Brakebill, et al. v. Jaeger (ND VOTER ID LAW)," Native American Rights Fund *available at* <https://www.narf.org/cases/nd-voter-id/>.

¹⁶ 570 U.S. 1 (2013).

Court struck down the parts of Proposition 200 that required proof of citizenship from individuals who use federal voter registration forms to vote, but allowed the State to continue to require voters to show identification at polling places. Under current Arizona law, all persons voting in person on Election Day must provide identification in order to receive a regular ballot and this identification must include the person's address.¹⁷

If the form of identification does not include the individual's photo on it, then the law puts the burden on the individual to provide additional documentation. Two additional forms of documentation that include the person's address must be provided at the polls. When individuals are unable to produce the required identification, they are forced to vote by filing a provisional ballot. However, individuals who vote early either by mail or in person, do not have to provide identification before receiving their ballots.

Tribal members can use either their United States Postal Service post office box or a nonstandard address on their Arizona identification, but because the Community's tribal identification cards do not include addresses, many tribal members run into problems on Election Day. Additionally, individuals living on the Pinal County portion of the Reservation do not have standard County street addresses, through no fault of their own, so their addresses usually are not correctly listed on the poll worker's voting lists. Because many tribal members do not receive mail at their rural homes, they must pay for and obtain a United States Postal Service post office box, sometimes located far from their homes. Tribal members unwilling to pay the Postal Service fees do not have reliable mailing addresses.

While many off-Reservation members may prefer to vote and send their ballots by mail, Community members on Reservation typically prefer to vote in person on Election Day due to the lack of reliable and timely mail service on the Reservation, and the lack of standard mailing addresses. Voting by mail is difficult because Reservation voters in Pinal County do not receive mail at their homes and post office hours on the Reservation are limited to working hours during the week and shortened hours on Saturday mornings. Further, individuals may change mailing addresses or move in between elections, which leads to a person's current address not matching the address listed on their identification document or poll address list.

In 2012, voter identification laws were strictly enforced on the Pinal County portion of the Reservation and many Community voters were turned away from the polls when their addresses did not match the voter rolls at the polls. In very few instances, voters were offered and allowed to cast a provisional ballot despite not having an address on their tribal identification document, but the majority of voters who ran into issues were denied ballots altogether. The Community later learned that Community members' addresses did not match the rolls because the County reassigned the physical addresses of all Community voters to be the service center where they vote. Because of this, no voter's physical address matched the physical address on the voter rolls and led to voters being turned away at the polls.

For Maricopa County voters in Districts 6 and 7, address issues also complicated some tribal voter's experiences. Reservation voters in Maricopa County were assigned standard addresses prior to the 2012 General Election, which changed their voting precincts.

¹⁷ A.R.S. § 16-579(A).

Unfortunately, these changes were neither communicated in advance nor delivered clearly to voters. In one instance, the traditional polling location for the Community's Co-Op Village was completely relocated for the 2012 election and voters showed up at the "wrong" location. These voters were turned away or frustratingly left the precinct without voting, and in very few instances, cast provisional ballots that were not counted.

Leading up to the 2016 Election, Gila River worked with Pinal County to try to remedy the voter address issue so that no Community voter would be turned away. The County revised their poll worker training material concerning voter identification issues to address Reservation voters, and included tribal identifications as an acceptable form of identification. The County also agreed to test an early voting site for one day during the 2016 General Election period on the Reservation, providing Reservation voters with an opportunity to vote early without showing identification.

Despite these improvements, the Community still had Pinal County tribal members who were turned away at the polls and did not vote in the 2016 Election. Voter identification laws in Arizona and non-traditional tribal address problems remain a huge barrier for the Community's voters, and the Community's leadership expects that these problems will continue to cause much voter confusion and concern in the next election. The Community is continuing to work with the local communities, voting organizations, and State and non-State government agencies to address these voting barriers.

B. Election Administration Issues

In addition to address and mailing issues, poll workers who staff polling precincts that serve Community members lack sufficient education and training about voting laws and are unaware of the protocols for remedying voter registration administration issues on site. Many voters show up at polling precincts confused about whether they are registered to vote or are not aware of whether they are signed up for the permanent early voting list, and do not receive the necessary assistance from poll workers to help troubleshoot their particular issues so that they may cast a ballot. We found numerous instances of poll workers not even offering provisional ballots as an option for Community members. When asked why provisional ballots were not offered, at least one poll worker indicated that they were not trained on provisional ballots. Additionally, we learned that some poll workers were not trained until the day before the election and the training was quick and short. On Election Day, poll workers are busy, overwhelmed, lack cultural sensitivity, and seem unable or too bothered to assist Community members in ensuring that they are able to vote, even if by a provisional ballot. The Community also has a number of convicted felons who require additional education about how their voting rights can be restored so that they can exercise their voting rights.

Election administration issues can be easily addressed with the right focus and attention to helping and serving voters, and an awareness and understanding that tribal members face unique challenges. More education and training is needed so that poll workers are better prepared to serve all voters, and the training and education needs to take place sooner than the day before an election. The Community understands that poll workers mean well and try to be good citizens, but they can only help if they are properly educated and trained. The primary goal

of poll workers should be to ensure that every person casts a ballot, and they should be trained and encouraged to take their time to troubleshoot problems to make sure every person votes.

III. COMMUNITY EFFORTS TO INCREASE VOTER REGISTRATION

The Community has made active efforts at a grassroots level to encourage and inform Community members to participate in elections in partnership with Get Out The Vote (“GOTV”), the Inter Tribal Council of Arizona, Inc. (“ITCA”), the National Congress of American Indians (“NCAI”), and the Native American Rights Fund (“NARF”). The Community’s Communication and Public Affairs office worked with GOTV and NCAI to produce video content to increase voter turnout among Community members. These videos were aired on the Community’s local low power television station and published on the Community’s official social media pages. The segments focused on encouraging Community members to register and exercise their right to vote. Within these videos, the Community discussed the historic struggle to vote within Arizona and both elders and youth spoke candidly about the importance of voting and the need to increase the number of voters across Indian Country. Each video also featured contact information so that Community members could easily reach out to the Gila River Voter Registration Board and know where to find information about the Community’s campaign to ensure that “Every Native Vote Counts.”

This past August, we hosted the Arizona Native Right to Vote Day celebration in District 4 of our Reservation. The event raised awareness about the unique history and importance of voting, and shed light on the recent developments in voting registration. Voting registration has increased within the Community since the 2016 Election, but the Community remains committed to further increasing the registration numbers. By the Community’s estimates, only 58% of the voting-age population is currently registered to vote and more must be done. Efforts to increase awareness and voter registration are costly and not every tribe has the resources to put towards voter registration. It would be helpful to have some state or federal resources targeted towards voter awareness and registration efforts on Indian reservations.

IV. CONCLUSION

Exercising one’s right to vote should not be hard to do. Across the United States, tribal members face unique barriers to voting and out of frustration that can be prevented, sometimes give up on exercising their voting rights. The Community appreciates the advances that have been made to date, but more work is necessary in order to protect tribal members’ ability to exercise their right to vote. The Community strives to carry on the legacy of Peter Porter, Rudolph Johnson, and so many other tribal advocates who fought to secure the rights that American Indians in Arizona have today. As the 2020 Election approaches, the Community thanks ITAA, NCAI, and NARF for their hard work in helping tribal governments and individuals address and overcome voting barriers across Indian Country. Within the Reservation, the Community looks forward to continuing to work with our tribal, federal, state, and local partners to improve the voting process for all American Indians within Arizona.

I want to thank this Committee for conducting field hearings across the United States and especially for coming to Indian Country with the goal of ensuring barriers to voting are identified and remedied before the next election.

Chairwoman FUDGE. Thank you.

Thank you both. We will now take questions from our panel.

Mr. Butterfield, you are recognized for five minutes.

Mr. BUTTERFIELD. Thank you very much, Chairwoman Fudge. And thank you to the two witnesses for your testimony today.

When Ms. Fudge became the Chairwoman of this Subcommittee, she promised that we would take these hearings all across the country, and she has fulfilled that commitment. And we are here today in Arizona collecting evidence that will be used in a very constructive way when we return to Washington. So, thank you, Chairwoman Fudge.

Thank you to my colleagues who have joined this panel today and I wish to thank the witnesses as well.

This is a Congressional hearing. As I say in all of these hearings across the country, this is not a political maneuver. This is a Congressional hearing. We are collecting evidence as we travel the country that will be entered into the Congressional record, and we will use it as Members of Congress to try to reinstate Section 4, and to enhance and to improve voter participation across the country and so this is a very important proceeding here today.

I am probably one of the few people around—no, there are a few more—who actually remember the enactment of the 1965 Voting Rights Act. It was days after I finished high school, August 6, 1965. A very powerful law.

The background of it is that after the passage of the Civil Rights Act of 1964, that Act did not include any provision regarding voting. That was too toxic of an issue to inject into the civil rights bill, and so after that, Martin Luther King, Jr., and others, began a new movement in Selma, Alabama, in January 1965, determined to get a voting rights bill enacted into law.

So when the bill was finally enacted in August of 1965, it included some very powerful provisions. The most notable was Section 2, which gives every aggrieved plaintiff or minority citizen the right to bring a lawsuit if they feel that some election system is diluting or affecting their vote. But the other provision which we are very concerned about is Section 5.

Section 5 covers—or covered, many States throughout the country. In some States, it only included portions of States. I believe here in Arizona, it was not involved in the original 1965 Act, but 7 years later, in 1972, the State of Arizona, in its entirety, was included in the Act for purposes of preclearance.

The reason for that was not because someone wanted to punish Arizona, but that meant, before 1972, there was a history pre-dating 1972 of severe voter discrimination, and so Arizona was included. So for years and years, Arizona was required to submit voting changes to the Department of Justice for preclearance.

But all of that came to a screeching stop on June 25, 2013, when the *Shelby* decision was rendered by the Supreme Court. But what many people do not fully understand is that the *Shelby* decision did not invalidate or strike down Section 5; it simply called on Congress, called on us in Congress to enact a formula that is a modern-day formula that will enable Section 5 to be more objectively applied.

So we are collecting evidence, and we are going to present that evidence in the public record, and hopefully, we can persuade the Supreme Court to accept a revision of Section 4.

And so thank you for your testimony. It is very valuable.

I was really struck when I read the briefing material today that, since 2012, in the State of Arizona, 13 of 15 counties have closed polling places. 320 polling places have closed. If Section 5 of the Voting Rights Act were still in full force and effect, that would not have happened. Each one of those closures would have had to have been precleared by the Department of Justice. The DOJ would have looked at it, and the burden of proof would have been on the State to prove that those closures would not have a discriminatory effect. Not purpose, particularly, but a discriminatory effect.

And so I just want to put that on your mind this morning, and just thank you for helping us with this fight. We are going to keep fighting until we can get Section 5 restored. So thank you very much for your testimonies today.

Chairwoman FUDGE. Thank you.

Mr. Aguilar, you are recognized for 5 minutes.

Mr. AGUILAR. Thank you, Madam Chairwoman. And just like my colleague, I want to thank the Chairwoman for bringing this important hearing to Arizona.

President Nez and Governor Lewis, in your testimony, you both highlight challenges and barriers that are unique to our friends in Indian Country. Both of you spoke about the role of institutional barriers related specifically to access as it relates to a P.O. box, and the role that residency plays spanning States or local jurisdictions, and the role that location election officials play inhibiting voting information and the potential for a right to vote by mail.

Can you both expand a little bit more on this and the role, the specific challenges that your communities face related to the P.O. box and the jurisdictional issues related to receiving ballot information, and how that affects individuals' opportunities to vote? President Nez.

Mr. NEZ. Thank you, Madam Chairwoman and Representative Aguilar, and thank you for the question. You know, the barriers that we see on the Navajo Nation are many. But one of the things that we do in our nation is, when there is a day of elections, it is a day to bring everybody together, to catch up with family members, to catch up on politics, and it is really a social event.

You know, when it comes to mailing in ballot provision, some of our citizens opt not to get mail-in ballots to their homes or to their boxes. But as was mentioned in the written testimony, that there may be at times as many as five families sharing a P.O. box, there is not enough post office boxes in a community that can take care of many of those citizens. So at times, you know, there may be some confusion by the Postmaster, and ballots get lost, or they are not given to the family member.

And so one of the things that we are advocating for at the Federal level is a little bit more resources so that we can have larger post offices on the Navajo Nation.

The other is also about the limited resources on getting information to our Navajo citizens. We are very rural, and that is why we are advocating on more broadband capability in rural Arizona, let's

put it that way, that includes Tribes, where we can get instant information through the internet, and so that any type of election changes we could get, as well as getting up-to-date changes in the election law.

Like, for instance, I will give you one example here in the State of Arizona. Senate Bill 1154 recently passed through the State legislature changed the elections to the first Tuesday in August. And so on the Navajo Nation, we had elections, Navajo elections and county, State, and Federal elections on the same day.

Now, with the change of the date, you know, if we are talking about—I think Madam Chairwoman and Representative Butterfield mentioned voter participation. Navajo elections, when we vote for Navajo candidates for our own government, voter participation is about 40-plus percent turnout. So the reason why we put it the same time as county, State, and Federal elections, is to get that voter participation up high, and it did work. It did work.

And now with the changes, we believe that the voter participation will decline for county, State, and Federal elections. And that news is new to a lot of our constituents out on the Navajo Nation. So how do we get that information out? It is always through PO box or some other type of social media, but not everybody has internet access.

So those are some concerns that we have. And thank you for the question, Representative Aguilar.

Mr. AGUILAR. I appreciate it.

Governor Lewis, briefly.

Mr. LEWIS. Thank you. In 2012, a number of our community members were turned away because of the strict enforcement of the 2012 voter identification laws. So the community tried to work with—and this was in Pinal County. And the community tried to work with Pinal County in a proactive fashion leading up to the 2016 election. We tried to remedy the voter address issue so that no community voters would be turned away.

The county revised their poll worker training material concerning voter identification to address reservation voters and include Tribal identifications as an acceptable form of identification. The county also agreed to test an early voting site for 1 day during the 2016 general election period on the reservation, providing an opportunity for early voting without showing identification, and that actually increased some of the votes in Pinal County from our community members.

But still, despite those improvements, the community had Pinal County Tribal members located in Pinal County who were still turned away at the polls and did not vote in the 2016 election.

So voter identification laws in Arizona and nontraditional Tribal address problems still remain a huge barrier for the community voters.

Chairwoman FUDGE. Thank you.

Mrs. Lesko, you are recognized for 5 minutes.

Mrs. LESKO. Thank you, Madam Chairwoman. And thank you, both of you, for being here. This is a really good opportunity to hear the unique problems that you have on your nations, and so thank you.

I do have a question for either one of you. With these unique problems that you have, have you worked directly with the Secretary of State, Katie Hobbs, to try to address these issues, and has anything been done? Either one of you.

Mr.—President Nez.

Mr. NEZ. Okay. Thank you, Madam Chairwoman, Representative Lesko, and community members. We are working with the Secretary of State as well as the county recorders that are within the Navajo Nation. And, you know, at times, we do have to fight very hard and even to the point where we have to take it into the courts. And right now, we have settled a case with the Secretary of State as well as a couple of the counties in the State of Arizona in terms of their focusing on bringing more Navajo speakers to the polling sites and, not just during Election Day, but also the early voting, early voting sites that get proposed by the counties and even the mobile early voting sites. And so those are being addressed.

We are working hard, just as I mentioned in my testimony. I think we have a good working relationship, but at times, we do have to let them know and remind them of the Voting Rights Act Section 2 and Section 5, and let them know that we are concerned that our Navajo speakers on the Navajo Nation are not being given the opportunity to get their explanation on voting and voting participation.

Mrs. LESKO. All right.

Mr. NEZ. Thank you.

Mrs. LESKO. And the other thing that was brought up previously was that we have fewer polling locations throughout the State, and I know that one of the answers given for that is because we have increased vote by mail so much in the State. So I am trying to get an idea if you know, either one of you, how many of your members vote by mail, what percentage? Has it grown? Because that really is one of the main reasons at least statewide that we have decreased the number of polling locations is because, statewide, 75 percent of the voters now vote by mail. So do either one of you know how many people in your nations vote by mail?

Mr. LEWIS. Madam Chairwoman, Members of the Subcommittee, I don't have specific numbers, but I know that it is a significantly smaller percentage that vote by mail. And just to really draw an important connection that President Nez, my fellow Tribal leader said, Election Day is important to us. It is about family. It is about reconnecting. We have—on our reservation, we sponsor traditional meals at the polling sites, aside, you know, for our community member voters to come out, to proudly come out and vote as their right as U.S. citizens but also members of sovereign nations as well.

It is a tradition. It is an ingrained tradition among our communities, especially with our elders as well, our veterans. Sometimes our elders bring their young grandchildren to model for them that voting is important as well. So, you know we have a proud history of the voting day being significant across our community as well.

In regards to proactive solutions with Secretary of State Hobbs, the community has worked with the Inner-Tribal Council of Arizona, a consortium of Tribes here in Arizona, where we actually are

happy to have hosted just maybe about 4 months ago a gathering that Secretary Hobbs came with her staff, Inner-Tribal Council, county recorders, and Tribal representatives to work together on this.

So in one room for all day we had those county recorder representatives from across Arizona, and we brought them together with those Tribal representatives so that, if there are any issues, that, you know, they were all of the same mind, that we have ongoing training for the latest voting laws, you know, that there would be coordinated, not a Tribe versus a county, but also to increase contact points between Tribes, and those county recorders that, as you know, is critical, to make voting day be as successful as possible.

Mrs. LESKO. Well, I am glad you are working together, and I just—I know my time is up, but there is also an agency that is under the jurisdiction of the Committee on House Administration called the Election Assistance Commission. And so they are supposed to help with resources, so possibly they could be a help as well. Thank you very much for being here.

Chairwoman FUDGE. Thank you.

Mr. Grijalva, you are recognized for five minutes.

Mr. GRIJALVA. Thank you very much, Madam Chairwoman, and thank you for your leadership on this Subcommittee and bringing this attention here to Arizona and to our native people in the State. It is important that all communities in this very important discussion about voting access, franchise, and participation be included. And I very much appreciate that, and thank you for that.

A couple of ironies—Arizona was one of nine States prior to the *Shelby* decision that was required for preclearance on many issues, even in the upholding of the harvesting issue that the Supreme—that the Ninth Circuit said. They said if preclearance would have existed, this legislation and this effort would not have occurred.

Having said that, I think that historically, there is a reason why Arizona was included in those nine states, and those vestiges have not all completely gone, and we all know that. And hopefully, this will lead to a dispassionate factual discussion about what needs to be done to make sure that every eligible voter in this country and in this State has a chance to vote.

Governor, Mr. President, I want to talk about two things: Voter ID, and you mentioned that and maybe amplified a little bit on that, and then also I think, you know, the issue of access to polling areas. And the other one is the one about given the distances, given accessibility, given the issues with mail access, addresses. H.R. 2023 prohibited the gathering of ballots in communities and particularly—and put stiff fines on that as an overreach on a non-existing issue of voter fraud. But I am asking the question because in response to what that legislation means to particularly areas that you serve and eligible voters on your Tribal lands and remote areas and how that affects and does not affect, if you wouldn't mind. Mr. President.

Mr. NEZ. Well, thank you, Madam Chairwoman and Representative Grijalva, and again, Members of the Committee. Let me just give you a perspective, an overview of what Navajo is looking at, and I think a lot of other Tribes throughout the country. And I

agree with you, Madam Chairwoman, when you say that the right to vote is sacred.

You know, Navajo Nation and many Tribes across the country would like to see Congress pass a Native American Voting Rights Act, and it would address the many concerns that have been raised today and are being raised today.

Voting issues are based on policies passed at the county and/or the State level, and it varies from county to county, as you heard today, and that causes confusion in Indian Country. The Native American Voting Rights Act would provide much needed consistency in the administration of voting in Indian Country. It would honor the government-to-government relationship with the Federal Government, and I do agree as well too. And if that is going to take some time, then we do have to advocate to keep the Voting Rights Act intact, Section 2 and Section 5.

We are coming before a Census count right now, right? That is no secret. Navajo Nation is doing their very best to count every Navajo citizen there, but I just want to keep you informed that a lot of our family members have to leave the Navajo Nation for other opportunities, whether it is jobs or university or colleges, and sometimes they get counted elsewhere. And so we are encouraging our Navajo citizens that are visitors outside the nation to make sure they get counted because, you know, when it comes to redistricting, we have an accurate count so that we can have our representation in the counties, in the State, as well as in Washington, D.C.

Thank you, Madam Chairwoman.

Mr. LEWIS. Madam Chairwoman, Members of the Subcommittee, of course, I think history is crucial to this as well. In 2004, Arizona voters approved the Arizona Taxpayer and Citizenship Protection Act, also known as Arizona Proposition 200, which required voters to present evidence of United States citizenship prior to voting.

In 2013, elements of Proposition 200 were overturned by the U.S. Supreme Court in *Arizona v. Inner-Tribal Council of Arizona*, Incorporated, in which the Supreme Court struck down the parts of Proposition 200 that required proof of citizenship from individuals who use Federal voter registration forms to vote, but allowed the State to continue to require voters to show identification at polling places.

So there are still—even though portions of that were struck down by our high court, there are still barriers. There are still critical issues that need to be changed, to be remedied. And on behalf of the Gila River Indian Community, I think it is time, overdue time to get Federal legislation to protect the rights to vote on Indian reservations among its first Americans because we do have a unique relationship. We do have unique situations on Indian reservations from traditional addresses to the barriers that are inherent on Indian reservations, Madam Chairwoman.

Chairwoman FUDGE. Thank you so very much.

Mr. Stanton, you are recognized for five minutes.

Mr. STANTON. I want to thank Phoenix College for hosting this important hearing, to you, Madam Chairwoman and former Mayor Fudge. Thank you for doing this hearing. During my time in Congress, I have come to know you as one of the most passionate and

effective voices for the right of every American to have equal access to the ballot box, and I want to thank you for having this important hearing here in Arizona.

And to my friend on my left, the Dean of our delegation, the Chair of Natural Resources Committee, Congressman Grijalva, thank you for all you do to protect Federal lands, particularly our Native American lands here in Arizona and around the United States of America.

And he is not here, so I will say things in absentia about him. I want to take a quick moment to recognize Congressman Gallego as well. He is one of the leading sponsors of H.R. 1694, the Native American Voting Rights Act, which I believe after this hearing, everyone will agree we need to pass in Congress and send to the President's desk. I am proud to be one of the original co-sponsors of the bill. In fact, we have five House members from Arizona who are co-sponsors of the bill. I am hopeful that our two U.S. Senators will take a look at the companion bill in the Senate and add their names as co-sponsors as well.

And I want to thank our two outstanding witnesses, Governor Lewis, President Nez, two of the finest, most effective leaders I know. I have had the pleasure of working with Governor Lewis for many years, especially on the issues of water and water planning for the State of Arizona. He is a visionary leader. Forward thinking leadership has meant a lot for Arizona. President Nez was sworn in in January, just like myself, and I have had the chance to spend time with him when I visited the Navajo Nation for a few days just last month. Let me tell everyone here, you can already see the positive difference he is making, and there is so much hope for the future. We are fortunate to have both of you here.

It is no secret that elections in Arizona historically and still today are a mess. The Nation took notice in March of 2016 when thousands of voters in Maricopa County waited hours, 5 and 6 hours, to vote in the Presidential preference election. I remember going out to the long lines myself, handing out water and cookies to those who were willing to wait unacceptable length of time to do their civic and patriotic duty.

It is still fresh in my mind how election officials were caught like deer in the headlights. They drastically cut the number of polling sites, and they thought nobody would notice. Well, we did notice. We saw firsthand how those cuts disproportionately hurt lower income and underrepresented communities. It is an important reminder of why, for decades, a bipartisan majority of Congress and Presidents of both parties renewed the Voting Rights Act and why Arizona was a preclearance State.

I was the Mayor of Phoenix at that time, and the day after that election, I asked the Department of Justice to investigate what took place. My letter to the DOJ provided additional details I don't have time to cover today. So, Madam Chairwoman, I would like to enter that letter into the record, if I may.

Chairwoman FUDGE. No objection, so ordered.

[The information follows:]



City of Phoenix

OFFICE OF THE MAYOR

March 23, 2016

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

*Re: Request for U.S. Department of Justice Investigation Into
Disparate Distribution of Polling Locations in Maricopa County*

Dear Attorney General Lynch:

Just after Midnight this morning, more than five hours after the polls closed on Tuesday, the final voters in Maricopa County were at last able to cast their ballots in Arizona's presidential preference election. Throughout the county, but especially in Phoenix, thousands of citizens waited in line for three, four, and even five hours to vote. Many more simply could not afford to wait that long, and went home. This is unacceptable anywhere in the United States, and I am angry that County elections officials allowed it to happen in my city.

Maricopa County officials approved a plan that cut polling locations by 85 percent compared to the 2008 presidential preference election (and 70 percent compared to the lower-turnout 2012 presidential preference election), and distributed fewer polling locations to parts of the county with higher minority populations. For example, in Phoenix, a majority-minority city, County officials allocated one polling location for every 108,000 residents. The ratios were far more favorable in predominantly Anglo communities: In Cave Creek/Carefree, there was one polling location for 8,500 residents; in Paradise Valley, one for 13,000 residents; in Fountain Hills, one for 22,500 residents; and in Peoria, one for every 54,000 residents.

Because of the unacceptably disparate distribution of polling locations, I respectfully request the U.S. Department of Justice investigate what took place in Maricopa County to ensure all voters are treated equally under the law.

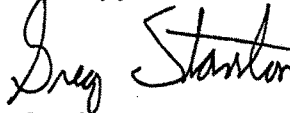
The Honorable Loretta Lynch
March 23, 2016
Page 2

My request comes on the heels of consistent activity that has created a culture of voter disenfranchisement in this state:

- Although Arizona ranks 16th in population, it ranked 5th on the total number of provisional ballots it rejected in 2014, discarding more ballots than states with more than double its population. Maricopa County's rejection rate was even higher than the state's. Minority voters were significantly over-represented among the rejected ballots.
- Since 2006, Arizona elections officials have rejected more than 121,000 provisional ballots and more than 46,000 mail-in ballots.
- Earlier this month, State officials approved a law that aims to suppress voter turnout by making it a felony (with a presumptive one-year prison term and \$150,000 fine) for volunteers, or even a friend or a neighbor to turn in a person's valid, sealed and signed early ballot.

Yesterday's fiasco demonstrates the urgent need for an independent and thorough law enforcement investigation to safeguard one of the most sacred rights we have as citizens, and I appreciate your serious consideration on this matter. Please contact me should you have any questions or need further assistance.

Sincerely yours,

A handwritten signature in black ink that reads "Greg Stanton". The signature is fluid and cursive, with the first name "Greg" and last name "Stanton" clearly distinguishable.

Greg Stanton
Mayor

GS:ss

Mr. STANTON. Thank you so much.

A couple of questions. President Nez, a few weeks ago, I had a conversation with the Navajo Nation's elections director. He expressed a great deal of frustration about the level of assistance that you are getting to conduct fair and open elections. What kind of support do you need from the State and county officials for the Navajo Nation community to have better access to the polls?

Mr. NEZ. Thank you for the question. Madam Chairwoman, Representative Stanton, community members, I did briefly mention our lawsuit against the State as well as the counties in providing better assistance to our Navajo-speaking citizens. That is the first step. We have had a dialogue. Matter of fact, we had a meeting with Navajo County and Navajo County officials and with the recorder, and I think more of those types of meetings will help in clarifying some of the barriers between the county and the Navajo Nation.

But in terms of actual assistance I think having the State legislature members come out to Navajo Nation to hold these types of hearings, just as you are doing today, which is very crucial to know the ins and outs of Indian Country. And we look forward to being a host to some of our representatives so that they know, because a lot of the laws that are being changed for the State of Arizona go through the legislature, and sometimes they don't know that it hurts the nation.

And I gave you a good example of that, changing the primary election date. And now, we worry that voter participation may decrease because the election is not at the same time as the Navajo Nation elections. And so that percentage could decrease and affect our representation in the county, State, and Federal Government.

Mr. Stanton. I think it is a great point. I will just finish up with this, by making the point that so many of our elected officials who may come from urban areas just don't quite understand the challenges your communities face when it comes to access to mail. So I think that point deserves a lot more exploration. I think we are going to do so throughout this hearing.

Thank you.

Chairwoman FUDGE. Thank you very much.

Mr. Gallego has joined us, and so we would like to hear from the representative of this district.

Mr. Gallego, you are recognized.

Mr. GALLEGO. Thank you, gentlemen. And thank you, first of all, to my leaders here, Mr. Butterfield and Ms. Fudge, for organizing this. And they have been great leaders in the voter enfranchisement world and have been for quite a while. I am very honored to have them here in my district. I apologize for being late. I had to take my son to the dentist, and apparently, two and a half-year-olds do not like dentists, so that was a struggle. But I really do appreciate both of you gentlemen for being here, also for always being leaders within the Native American community.

You know, I think I remember my days at the Arizona State House, and I certainly remember when there were approaches and attempts to stop ballot collection, and one of the things I kept hearing is the potential for voter fraud. Now, in my experience, there

was never any—there never has been any proven at all accusation of voter fraud when it comes to collection of mail-in ballots.

Do you know, either of you gentlemen, if you have any history or know of any history of collection—or fraud when it comes to mail-in ballot collection that occurred on your prospective reservations? We will start with my right. Governor Lewis.

Mr. LEWIS. Madam Chairwoman, Members of the Subcommittee, I have never heard of any—any sort.

Mr. GALLEGO. President Nez.

Mr. NEZ. Not to my knowledge as well, Representative Gallego.

Mr. GALLEGO. And since this “ballot harvesting” law has taken place, have you heard the opposite? Have you heard of people not being able to actually get their ballots in because of this law that discourages, you know, active participation of people trying to actually, you know, have people vote, especially, as we know, in both the Gila River as well as the Navajo Nation, the long distances that you have to travel with not great roads? Have you heard of people basically being disenfranchised because of this law?

Mr. LEWIS. Madam Chairwoman, Representative Gallego, I have definitely seen the barriers increase for our voters on the Gila River Indian Community voting at the polls, access to voting, access to early voting being—at times, feeling that they are being singled out and discriminated for being Native Americans living on an Indian reservation.

Mr. GALLEGO. And, Chairman Nez.

Mr. NEZ. I was just going to say—thank you, Representative Gallego—the language barriers, I mentioned that earlier to the Subcommittee members, the Navajo language, a lot of those—a lot of the information, all the information that we receive from the recorders, even the Secretary of State, they are not translated into or written in the Navajo language. And so if someone that is a non-English speaker gets a ballot, and they don’t read what is on the envelope, which states that you have to sign the envelope before you turn it in, and I think there are instances where some of our members didn’t sign that, and they were told that it wasn’t a legitimate ballot.

And the other is turning in the ballots. When an individual turns in the ballot, it has to be that individual turning in the ballot. Sometimes—I talked earlier about transportation and families helping each other out. Sometimes people don’t necessarily have to go all the way to their county headquarters or the county seat which, you know, from Kayenta to Holbrook is three hours, and I don’t see grandma taking that three-hour trip. They might give it to one of their relatives to drop it off, but then when they do that, it is invalid.

Mr. GALLEGO. Just a follow-up question, if I remember the law as written, the first time they try to run it, and the second time is that only an immediate family member can take a ballot in, if I remember correctly. Now, in both Navajo and Gila River tradition, the idea of family is a lot more expansive than an Anglo family, correct? Could you kind of explain how this more Anglo-centric point of view of family basically disenfranchises your communities? We will start with President Nez.

Mr. NEZ. And thank you again for the question, Representative Gallego, and Subcommittee members. For the Navajo Nation, I am sure for other Tribes, we have a clan system where, you know, we have floor plans, and we relate to each other in that type of kinship there on the Navajo Nation. So it might not be an immediate family or an extended family, but somebody could be my brother on the other side of the Navajo Nation. And so that is something that folks off the Navajo Nation have a hard time grasping.

Mr. GALLEGO. Governor Lewis.

Mr. LEWIS. Thank you. And extended family is important, is a bedrock of our community as well. You know, if you were raised by your aunt or your uncle there, for instance, for all intents and purposes, in our custom and tradition, they are your father or your mother as well. Grandparents. And also for me, my late grandfather, his two sisters were one of our first poll workers as well, and they made sure that we voted. And they made sure that what would be my first cousins or my second cousins, they are all family. And so I think that is important that we look at our families as expansive. We don't look at family in a constrictive non-Anglo sense.

Mr. GALLEGO. Thank you, Madam Chairwoman.

Chairwoman FUDGE. Thank you very much.

As we wrap up this session, let me thank you both. If our next panel would prepare themselves to come up, let me just make a few closing remarks.

Let me first just apologize to you for the injustices you have endured in this Nation. I think about history, and I realize that my ancestors were brought here against their will. Many people came of their own free will, but you were here. And I think that it is important for us to understand that as we talk about the greatness of America, America is great because of her ability to repair her faults. It is time for us to do what is right by your nation. It is time for us to make you feel as if you are the kind of citizens that you always have been because you were here first. And I think that it is also important that as we measure ourselves against the rest of the world, and other nations want to measure up to us, that we have to set the right example, and we should not in any way ever try to make it more difficult for people to vote. We should be encouraging people to vote. It is unconscionable to me that somebody would have to drive an hour or two or three hours to cast a ballot. It is un-American.

And with that, I would thank you again, and we will prepare for our next panel. Thank you very much.

Chairwoman FUDGE. Let me introduce our second panel. First we have Patty Ferguson-Bohnee.

Ms. FERGUSON-BOHNEE. Bohnee.

Chairwoman FUDGE. Bohnee? All right.

The Director of the Indian Legal Clinic, Faculty Director of the Indian Legal Program, and Clinical Professor of Law and the Sandra Day O'Connor College of Law at Arizona State University.

Lorena C. Van Assche.

Ms. VAN ASSCHE. Van Assche.

Chairwoman FUDGE. Van Assche is a lawyer and the current Chair of the Arizona State Advisory Committee to the U.S. Commission on Civil Rights.

I am going to give it a shot. Montserrat Arredondo.

Ms. ARREDONDO. Yes.

Chairwoman FUDGE. Is the Table Director at One Arizona, a coalition of 19 organizations focusing on voter registration and civic engagement. She began her career in advocacy in 2010 when the infamous “show me your papers” bill, S.B. 1070, passed in Arizona.

Mr. Alex Gulotta is the Arizona State Director of All Voting is Local where he fights for the right to vote through a unique combination of community power, of community power building, data-driven advocacy, and strategic communications. Prior to that, he served the Access to Justice community for more than 30 years as an antipoverty advocate.

Darrell Hill.

Mr. HILL. Darrell.

Chairwoman FUDGE. Darrell. I am just striking out today.

Darrell Hill is the ACLU of Arizona’s Policy Director.

And lastly but not least, Arizona State Senator Michelle Ugenti-Rita.

Mr. CALVERT. You got it.

Chairwoman FUDGE. Representing the 23rd District. The Senator is an Arizona native and was first elected to the Arizona State Senate in 2018. She previously served in the Arizona House from 2010.

I welcome you all.

We will begin with Ms. Bohnnee.

And you are recognized for five minutes.

STATEMENTS OF PATRICIA FERGUSON-BOHNEE, PROFESSOR OF LAW, INDIAN LEGAL CLINIC, ASU LAW SCHOOL; LORENA C. VAN ASSCHE, ARIZONA STATE ADVISORY COMMITTEE, U.S. COMMISSION ON CIVIL RIGHTS; MONTSERRAT ARREDONDO, ONE ARIZONA; ALEX GULOTTA, ARIZONA STATE DIRECTOR, ALL VOTING IS LOCAL; DARRELL L. HILL, POLICY DIRECTOR, ACLU OF ARIZONA; AND MICHELLE UGENTI-RITA, STATE SENATOR, STATE SENATE OF ARIZONA

STATEMENT OF PATRICIA FERGUSON-BOHNEE

Ms. FERGUSON-BOHNEE. Thank you very much, Chairwoman Fudge, and Members of the Subcommittee.

Chairwoman FUDGE. Could you move the microphone a little closer?

Ms. FERGUSON-BOHNEE. Yes, ma’am.

Good morning, Chairwoman Fudge, and Members of the Subcommittee. Thank you for inviting me to speak on this important issue of voting rights and elections administration.

My name is Patty Ferguson-Bohnee. I am the Director of the Indian Legal Clinic at the Sandra Day O’Connor College of Law. The clinic runs the Native Vote Election Protection Project in Arizona, a nonpartisan effort to protect Native American voting rights. As you heard, there is a long history of voter suppression in Arizona. Things have improved with the Voting Rights Act. However, Native Americans continue to face obstacles.

In order to understand Native American voting challenges, one must recognize the vast differences and experiences, opportunities, and realities facing on-reservation voters. Isolating conditions such as language, socioeconomic disparities, lack of access to transportation, lack of residential addresses, lack of access to mail, the digital divide, and distance are just some of the factors that impede access to the polls and participation in the political process.

Unfortunately, decisionmakers often fail to consider these factors when adopting new laws or practices that impact the right to vote. A recent study found that low levels of trust in Government, lack of information on how and where to register, long distances to register and to vote, low levels of Internet access, hostility towards Native Americans, and intimidation are obstacles to Native American voter participation in Arizona.

Native Americans do not have equal access to voter registration. Many voters must travel long distances off-reservation to register to vote, in some cases 95 miles one way. Further, in 2016, only one of nine covered jurisdictions subject to Section 203 of the Voting Rights Act for Native Americans languages translated voter registration information in the covered language. And while online voter registration is possible for off-reservation voters, this option is limited for on-reservation voters.

First, less than half of the homes on Tribal lands have reliable broadband access. Second, even if a voter has internet access, the State does not allow Tribal IDs to be used to register to vote online. Third, individuals with nontraditional addresses cannot use the online process to register to vote.

In addition to voter registration barriers, Native Americans also have unequal access to in-person early voting opportunities. While every county has in-person early voting off-reservation, there are limited opportunities for in-person early voting on-reservation. If offered at all, most in-person early voting is limited to a few hours on one or two days. In 2016, ten reservations had some form of in-person early voting; and only five had in-person early voting in 2018.

One of the most egregious examples of lack of access to in-person early voting involves the Kaibab Paiute Tribe. Kaibab Paiute residents must travel over 280 miles one way to participate in early voting. These voters do not have a polling location on or near the reservation on Election Day. In fact, Mohave County moved the Tribe's polling location to Colorado City; and when the Tribe requested a polling location on the reservation for Election Day voting, it denied it, citing ADA compliance issues.

Vote by mail is not the solution for Tribal communities. Lack of access to home mail delivery, public transportation, vehicles, and language assistance, as well as long distance to post offices, make it difficult for Native voters to vote by mail.

In addition, voter ID continues to be a problem for Native voters. Even when a voter has a valid form of Tribal ID, these are rejected in each election due to insufficient poll worker training or because of problems with nonstandard addresses. Until recently, voters could vote early without showing an ID. However, in 2019, the State enacted a law, requiring voters to also show ID if they vote early in person, while voters who vote early by mail have no such

requirement. Not only does this violate equal protection, it will disproportionately impact Native voters, specifically Native language speakers who can only receive language assistance in person.

Prior to *Shelby County*, covered jurisdictions would have to consider whether a law would have a negative impact on minority voters. This is no longer the case. Legislation affecting voting often appears neutral with the stated goal of preventing voter fraud. The application of said legislation, however, has a disparate impact on minority voters. Without Section 5's protection, there is a new concern that voting laws and practices will continue to be adopted that suppress the Native American vote. These concerns include closure of polling locations, adopting all vote-by-mail elections, and voter ID laws. Using pretexts such as ADA and voter integrity to undermine voter rights should not be allowed.

Thank you for the opportunity to address the committee. I look forward to any questions you have.

[The statement of Ms. Ferguson-Bohnee follows:]



**TESTIMONY BEFORE THE HOUSE COMMITTEE ON ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
HEARING ON
VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN ARIZONA**

**PATTY FERGUSON-BOHNEE
DIRECTOR, INDIAN LEGAL CLINIC
CLINICAL PROFESSOR OF LAW
SANDRA DAY O'CONNOR COLLEGE OF LAW
OCTOBER 1, 2019**

**Indian Legal Program
Beus Center for Law and Society
111 E. Taylor St., MC9520, Phoenix AZ 85004-4467
(480) 727-0420 | Fax: (480) 727-9270**

Chairwoman Fudge, Ranking Member Davis, and members of the committee, thank you for inviting me to testify today. My name is Patty Ferguson-Bohnee, and I am the Director of the Indian Legal Clinic at Sandra Day O'Connor College of Law at Arizona State University. The Indian Legal Clinic oversees the Native Vote – Election Protection Project in Arizona, a non-partisan effort to protect Native American voting rights founded in 2008 in response to disparities in voting as a result of Arizona's voter identification law.

To put today's conversation into context, despite the Indian Citizenship Act of 1924 and an Arizona Supreme Court decision affirming the rights of Native Americans to vote in 1948 in *Harrison v. Laveen*, the Native American franchise was not secured until 1970 when the United States Supreme Court upheld the ban against using literacy tests as a voter qualification.¹ When that right to vote was finally secured, steps were taken to prevent Native Americans from participating in elections and being elected to office.² Today, that right continues to be challenged through the passage of new laws and practices that fail to even consider the potential disparities the changes could have on Native American voters.

In Arizona, roughly 27% of the land within the state is tribal land. There are twenty-two federally recognized tribes and twenty-one reservations.³ Five of the ten largest reservations in the United States are located in Arizona and approximately 5% of the state's total population is Native American. There are eight tribes in Arizona that have land located in two or more counties, meaning despite being one tribe or one reservation, they are subject to two or more sets of election policies. Four reservations span three counties.

Barriers to Voting

In order to understand the challenges faced by Native American voters, one must recognize the vast differences in experiences, opportunities, and realities facing on-reservation voters as compared to off-reservation voters. Access to the polls and participation in the political process are impacted by isolating conditions such as language barriers, socioeconomic disparities, lack of access to transportation, lack of residential addresses, lack of access to mail, the digital divide, and distance.

¹ The 1970 Amendments to the Voting Rights Act suspended the use of literacy tests as a qualification for voting. Arizona had a literacy test for voter registration and unsuccessfully challenged the prohibition on using literacy tests. *Oregon v. Mitchell*, 400 U.S. 112 (1970).

² See generally, Patty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, 47 ARIZ. ST. L.J. 1099 (2015).

³ U.S. Forest. Service Office of Tribal Relations, Forest Serv. Nat'l Res. Guide to Am. Indian and Alaska Native Relations. App. D-3, FS-600 (Apr. 1997), available at <https://www.fs.fed.us/spf/tribalrelations/documents/publications/NtlResourceGuide/tribexd.pdf>.

Socioeconomic Barriers

Many Native Americans in Arizona face obstacles in voting as a part of their socioeconomic reality. The poverty rate for Native Americans in Arizona is 35.7%;⁴ whereas, non-Hispanic whites in Arizona experience poverty at a rate of 10.9%. Native Americans in Arizona are more likely to work multiple jobs, lack reliable transportation, and lack adequate childcare resources.⁵

An additional problem impacting many Native Americans is homelessness or near homelessness due to extreme poverty and lack of affordable housing on many reservations. A study by Housing and Urban Development found that between 42,000 and 85,000 people in tribal areas are couch surfers, staying with friends or relatives only because they had no place of their own.⁶ Some of the highest rates of near homelessness and overcrowding in Indian Country are found in Arizona. This lack of permanent housing impacts the ability of these tribal members to have a permanent physical address, yet this should not impede their ability to exercise their right to vote.

Nontraditional Addresses

Many Native American living on reservations lack traditional street addresses.⁷ Many roads on reservations are unimproved dirt or gravel roads, and “many miles of these roads are impassable after rain or snow. Because of the poor quality of the road systems on Indian reservations, many of the roads are unnamed and not serviced by the U.S. Postal Service. . . . A significant number of these reservation residents have no traditional street addresses.”⁸ In Arizona, only 18% of reservation voters outside of Maricopa and Pima Counties have physical addresses and receive mail at home.⁹

Due to the lack of traditional addresses, many Native American voters rely on post office boxes to receive their mail and may include a post office box on their state identification. “Most reservation residents do not receive mail at their homes and either pay to maintain a post office box in a nearby town or receive their mail by general delivery at a trading post or other location. Some reservation residents have to travel up to seventy miles in one direction to receive mail.”¹⁰ “On the Navajo

⁴Nationally, the poverty rate for Native Americans is 26.8%. Poverty Rate, MAP AZ Dashboard (2019), available at <https://mapazdashboard.arizona.edu/health-social-well-being/poverty-rate/poverty-rate>.

⁵*Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 704 (9th Cir. 2018), *reh'g en banc granted*, 911 F.3d 942 (9th Cir. 2019)(Thomas, S., dissenting).

⁶ HUD, Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native and Native Hawaiian Housing Needs (Jan. 2017) at xx, 76, 82, 85, available at <https://www.huduser.gov/portal/sites/default/files/pdf/HNAI/HousingNeeds.pdf>.

⁷ Native American Voting Rights Coalition, Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota at 3, 5 (Jan. 2018).

⁸ Brief for National Congress of American Indians et al. as Amici Curiae supporting Petitioners, *Crawford v. Marion County* at 11-12 (2008), available at https://sct.narf.org/documents/crawford/merits/amicus_ncai.pdf.

⁹ *DNC v. Reagan*, 329 F. Supp. 3d at 869-70.

¹⁰ Brief of Amici Curiae NCAI at 12, *Crawford v. Marion County* (2008).

Reservation, most people live in remote communities, many communities have little to no vehicle access, only post office boxes, sometimes shared by multiple families.”¹¹ The Navajo Nation does not have an addressing program.¹² Further, the Navajo Reservation has over 10,000 miles of road, 86% of which are unpaved. Half of the paved roads are in poor pavement condition.¹³ Similarly, “[t]here is no home delivery in the Tohono O’odham Nation, where there are 1,900 post office boxes and some cluster mail boxes. The postmaster for the Tohono O’odham Nation . . . observes residents come to the post office every two or three weeks to get their mail. Due to the lack of transportation, the condition of the roads, and health issues, some go to post office only once per month.”¹⁴

The lack of formal addresses in Indian Country makes it especially hard for voters to comply with address requirements to register to vote or to produce identification in order to vote on election day.¹⁵ Voters may be placed in the wrong precinct, their ID address may not match the voter rolls, and voters may not receive their election mail timely, if at all.

Voter Registration Access

Non-traditional addresses for reservation residents create additional registration problems. For example, in Arizona, the lack of traditional addresses resulted in voters being placed on suspense list or their IDs being rejected at the polls.¹⁶

Native Americans do not have the same access to voter registration as off-reservation voters, and turnout for Native Americans is the lowest in the country, as compared to other groups.¹⁷ While a number of issues contribute to the low voter turnout, a study conducted by the Native American Voting Rights Coalition in Arizona found that low levels of trust in government, lack of information on how and where to register and to vote, long travel distances to register or to vote, low levels of access to the internet, hostility towards Native Americans, and intimidation are obstacles to Native American voter participation.¹⁸ In 2016, few counties offered voter registration services on the reservation, while voter registration services were available during the counties’

¹¹ *Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824, 869 (D. Ariz.), *aff’d*, 904 F.3d 686 (9th Cir. 2018), *reh’g en banc granted*, 911 F.3d 942 (9th Cir. 2019).

¹² Carrie Jung, *Home Addresses on Navajo Nation are Rare* (Oct 8, 2015), *available at* <https://kjzz.org/content/202564/home-addresses-navajo-nation-are-rare-officials-working-change>.

¹³ FY2019 Navajo Nation Tribal Transportation Plan at 1, *available at* http://navajodot.org/uploads/files/Draft%20FY2019%20NNTTIP_08-20-18.pdf.

¹⁴ *Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d at 869.

¹⁵ Native American Voting Rights Coalition, *Voting Barriers Encountered by Native Americans in Arizona*, New Mexico, Nevada, and South Dakota at 5 (Jan. 2018).

¹⁶ Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona*, 47 *Ariz. St. L.J.* at 1140-1141.

¹⁷ Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy* at 3, 6, *available at* <https://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

¹⁸ Native American Voting Rights Coalition Study at 3, 5.

normal working hours for off-reservation voters. In 2016, nine counties were covered for Native American languages under Section 203 of the Voting Rights Act. Only one provided translations of voter registration information in the covered language.¹⁹ For example, Navajo voters living in Teec Nos Pos in Apache County had to travel 95 miles one way to obtain in-person voter registration assistance.²⁰

On-line voter registration is possible for off-reservation voters with broadband access. However, less than half of the homes on tribal lands have reliable broadband access.²¹ Even if a voter has access to broadband on the reservation, the State of Arizona does not allow tribal IDs to be used as a form of ID to register to vote online, even though tribal enrollment is a valid form of proof of citizenship to register to vote.²² Registering to vote online or driving somewhere to register to vote, or voting itself, can be logistically challenging if not economically infeasible.

Barriers to Early Voting

Arizona has two forms of early voting, in-person early voting and vote by mail. Each county in Arizona offers in-person early voting. If in-person early voting is offered to off-reservation residents, equal access should be provided to on-reservation residents. However, Native Americans do not have equal access to in-person early voting opportunities. While some counties offer in-person early voting, it is often for a few hours on one or two days. Ten reservations had in-person early locations on the reservation in 2016, and even fewer had in-person early voting in 2018. Tribal members with no in-person early voting options often had to travel long distances to participate in early voting. In 2016, Mohave County did not offer early voting on or near most of the Tribal reservations. Voters on the Hualapai Reservation had to travel 48 miles one way to early vote in person and voters on the Kaibab Paiute Reservation were required to travel over 285 miles one way to an in-person voting location.²³ In 2018, only 1.5% of off-reservation voters in

¹⁹ Indian Legal Clinic, Arizona Native Vote – Election Protection Project: 2016 Final Report at 34.

²⁰ *Id.* at 19.

²¹ Keerthi Vedantam, *Thin on broadband: Tribal areas still struggle with lagging technology* | Cronkite News - Arizona PBS Cronkite News - Arizona PBS (2019), available at <https://cronkitenews.azpbs.org/2019/05/08/tribal-lands-limited-broadband-internet/>.

²² The Arizona online voter registration is processed through Service Arizona, an authorized website operated by the Arizona Department of Transportation. Upon accessing the proper site to register online, an individual wishing to register is prompted with a list of questions to verify voter registration eligibility. Once voter registration eligibility is verified, the form requires the individual to provide an Arizona Driver License number. If the individual does not have an Arizona Driver License number, then they have two options: either complete “a State paper voter registration form” by downloading it from the site or select the site option “What if I don’t know my Driver License or Identification Card number?” If requesting the site to assist with identifying the Driver License number, the individual is then prompted to provide the “residential street address currently on file with the Motor Vehicle Division.” Most reservation voters will not have a residential street address on file.

²³ ILC, 2016 Final Report, Appendix IV, page 7.

Coconino County had to travel more than 20 miles to vote at an early voting location, while almost half of the voters on the Navajo Reservation had to travel more than 20 miles.

In 2018, Pima County refused to offer an in-person early voting location on the Pascua Yaqui Reservation, as it had done in previous years. Instead, it directed Pascua Yaqui tribal members to vote at the San Xavier Mission polling location. Even though the Mission is only five miles from the Pascua Yaqui Reservation, the Pascua Yaqui voting coordinator reported that it took a voter over two hours to participate in early voting using public transportation.

Vote by Mail Barriers

Vote by mail is not a simple or easy task for Native American voters. Native Americans are less likely to have mail delivered to their homes, especially when living on tribal lands.²⁴ Many on-reservation voters live in rural Arizona where it is common for mail to arrive late or not at all. Non-Hispanic whites are 350% more likely to have mail delivered to their homes than Native Americans in Arizona.²⁵ Reservation residents often rely on post office boxes that may be 45 minutes to a 2 hour drive away.²⁶ The difficulties accessing mail make voting by mail difficult because traveling to the P.O. Box to pick up your ballot and then returning it can be an all-day task, without a car it may be impossible. Voting early by mail on-reservation is largely unreliable. Thus, vote by mail is not as accessible for Native Americans living on reservation as it is for off-reservation voters. In addition, many Native American languages are not written, and all of the Native American languages covered for language assistance in Arizona must be provided orally. Therefore, language assistance to Native American voters must be done in-person and cannot be done through the mail.

In 2018, the Navajo Nation filed a lawsuit when it learned that counties were curing mismatched signatures on early ballot envelopes, but not unsigned ballot envelopes. The Nation learned that Navajo voters were not provided instructions on how to complete an early ballot in the Navajo language, and were even told in at least one instance that no signature was needed. The failure to provide an opportunity for voters who did not sign their ballot an opportunity to cure but allowing voters who do sign an opportunity to cure is an equal protection issue. Failure to advise the voter of the issue and give the voter an opportunity to remedy it is a due process violation.

Voter Identification Barriers

In 2004, Arizona passed a voter ID law. As a natural consequence of the socioeconomic conditions already mentioned, Native Americans are less likely to have the forms of identification that satisfy

²⁴ *Id.*

²⁵ *DNC v. Reagan*, 329 F. Supp. 3d at 869.

²⁶ *Id.*

state law. During the 2006 election, 428 Navajos voted provisional ballots that were never counted because they did not verify their identification. The Navajo Nation sued alleging that the voter ID law violated Section 2 of the Voting Rights Act; the case was eventually settled to expand the acceptable forms of identification to include certain forms of tribal ID.

Despite the settlement, valid forms of tribal ID are rejected in each election due to insufficient poll worker training or because of problems arising with non-standard reservation addresses.²⁷ It is unclear if counties train poll workers on the types of ID that qualify as tribal ID.

Nontraditional addresses have also been a barrier to receiving a regular ballot. For example, in Pinal County, Gila River Indian Reservation voters were assigned residential addresses because the voter database would not accept the nonresidential addresses. This resulted in Gila River voters being denied a ballot because the address assigned to them by Pinal County was not the address on their ID. This issue was resolved prior to the 2016 General Election.

In 2018, Maricopa County introduced a new kiosk system. Although the system could not read tribal IDs, poll workers failed to advise tribal voters that they could still vote using their Tribal IDs, and some voters were turned away from the polls for lack of valid ID.

As of 2019, if an elector votes in person, the voter is required to bring a form of ID that satisfies the state's voter ID law, but, if you vote by mail you are not required to present ID when voting.²⁸ This sets up an equal protection problem because the State is treating early voters differently. In addition, this law potentially disproportionately impacts Native American voters who have less access to early voting by mail and IDs than other Arizona voters.

Precinct-Based Voting Barriers

The precinct-based system is inherently a barrier to Native American voters. Counties that do not have vote centers require that voters be in the proper precinct in order for their ballot to be counted. However, poll workers sometimes give voters provisional ballots without telling voters it will not count if they are not in the correct precinct.

Out of Arizona's 15 counties, 6 counties have vote centers on *or* near tribal lands – most are in Navajo County. The others include Maricopa, Gila, Yavapai, Yuma, and Graham. The remaining 9 counties – Pima, Coconino, Apache, Pinal, Cochise, Santa Cruz, Greenlee, La Paz, and Mohave require voters to vote in their precinct in order for their vote to be counted. If a voting precinct is

²⁷ In 2018, a vote center located in Guadalupe, Arizona (a Pascua Yaqui township) rejected valid tribal identification.

²⁸ A.R.S §16-411(B)(4).

not open or functioning during an election, voters in closed-precinct counties may be denied the right to vote because they cannot vote at another location.

ADA Compliance

A new threat facing Tribes is the use of the Americans with Disability Act to close or not offer polling locations on reservations. Kaibab Paiute requested a polling location on its reservation in Mohave County in 2016 and 2018. The County denied the request stating that the tribal building fails to meet ADA requirements. The nearest polling location was over 40 miles to Colorado City. The Tribe noted the challenges for tribal members to get to Colorado City and the amount of time needed to go to the polling location on election day. Other Tribes also faced pushback from counties when requesting early voting or polling locations on their lands. Complying with the ADA is important, but in Indian Country, counties should be encouraged to use temporary measures to make voting accessible. Further, Tribes should not be required or asked to spend limited resources to make facilities permanently compliant in exchange for a polling location.

Section 2 is Not a Viable Solution to Section 5

Prior to *Shelby County*, covered jurisdictions would have to consider whether a law would negatively impact minority voters. During the poll closures in the 2016 Presidential Preference Election, Maricopa County admitted that it did not consider the impact of the closures on minority communities. Requiring ID to vote in-person while other early voters, who vote by mail, are verified through signature verification is another change that should be evaluated as to whether it disproportionately impacts Native American voters, specifically Native American language speakers who can only vote using in-person early voting in order to obtain language assistance. In addition, efforts to change voting to all vote by mail would severely limit voter access for Native American voters.

The next round of redistricting will be challenging for Tribes. Tribes participated in the redistricting process and defended the single majority-minority Native American legislative district. The Commission consulted an expert to ensure that it did not retrogress, and it was the first time that Arizona's maps received preclearance on the first submission since it became a covered jurisdiction. The concern is that the Commission may not consider retrogression since the State is no longer a covered jurisdiction and tribal communities may lose its limited opportunity to elect candidates of choice in state government.

Section 2 cases to enforce the provisions of the Voting Rights Act are expensive and time consuming. Tribes have limited resources to bring voting litigation, and the federal government has not brought any cases on behalf of Arizona Tribes in the past two decades. When the Navajo

Nation and the Inter Tribal Council challenged the voter ID law following its passage in 2004, the Court failed to grant relief leading up to the 2008 General Election. Courts are reluctant to grant relief close to an election due to the *Purcell* principle adopted in the voter ID case.

Conclusion

Legislation affecting voting often appears neutral with the stated goal of preventing voter fraud, although often lacking any record of voter fraud to warrant the change. The application of said legislation often has a disparate impact on minority voters. Without Section 5's protection, there is a concern that new voting laws and practices will continue to be adopted that suppress the Native American vote. These concerns include closure of polling locations, adopting all vote-by-mail elections, and the new Voter ID law required at early voting locations.

Potential solutions to consider:

- Provide funding to make tribal locations temporarily accessible under the ADA.
- Offer Same Day Voter Registration. Some counties are using provisional ballots as voter registration applications. The counties are already processing these forms so they could process them as same day voter registration applications.
- Ensure all Tribes have access to voter registration, in-person early voting, and polling locations on their reservations.
- Provide funding so that all counties can offer out-of-precinct voting.
- Provide equal options to be used for voter ID – if signature verification is sufficient ID for vote by mail, it should also be an option to process an in-person early ballot and a ballot cast on election day.
- Provide assessments as to whether jurisdictions are complying with Section 203's language requirements.
- Provide more resources to enforce Section 2 of the Voting Rights Act.
- Provide an updated coverage formula to help curb the ongoing voter suppression laws.
- Require jurisdictions to consult with Tribes regarding polling locations on their respective reservations.
- Create an independent office that can evaluate Section 2 vote denial claims and bring actions on behalf of underrepresented groups.

Chairwoman FUDGE. Thank you, Ms. Bohnnee.
Ms. Van Assche, you are recognized for five minutes.

STATEMENT OF LORENA C. VAN ASSCHE

Ms. VAN ASSCHE. Thank you, Chairwoman Fudge, and thank you to the community for the opportunity to testify today.

I am the Chair of the Arizona State Advisory Committee the U.S. Commission on Civil Rights; and in March 2018, the Arizona Committee convened a public meeting in Phoenix where we 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, and restriction on mail-in ballots, additionally on the impact of the *Shelby County v. Holder* decision.

After reviewing the oral and the written testimony, the Arizona Committee prepared an advisory memorandum that was submitted to the U.S. Commission on Civil Rights; and my testimony today will attempt to summarize the findings that are found in the advisory committee.

And I will start with first section on access to polling locations. As Chairwoman Fudge identified in her opening remarks, in the aftermath of *Shelby County v. Holder*, Arizona made—Maricopa County made headlines for the long wait times. Nearly every county reduced the number of polling locations. In Maricopa County, officials cut polling locations by 85 percent, compared to the 2008 presidential preference election, and 70 percent compared to the 2012 presidential preference election.

Election officials who testified justified these closures due to a decrease in demand, because of an increase in early voting preference, cost pressures, and less locations willing to serve as polling locations because of increased liability, lack of security, lack of compliance with ADA, and insurance concerns. Some of these election officials testified that the remedy—to remedy the closure of polling locations, counties have the discretion to implement a vote center model.

Members of the disability community testified that they were especially impacted. They said that when they showed up, the poll workers lacked knowledge on how to operate accessible voting machines and even failed to turn on the machines. They testified that the polling locations lacked wheelchair ramps or elevators and sufficient accessible parking spaces.

We also heard testimony that transportation was a barrier for our protected voter groups to access the polls, impacted disabled—the disabled community who often rely on public rides and, due to the wait times, could simply not wait long enough to vote and get back on their public rides, as well as the Native Americans who reside in reservations, as you have heard, some spanning thousands of square miles and have few or no polling locations available to them.

We also heard testimony on language access. The committee heard testimony that poll workers are not adequately trained to deal with nonnative English speakers. This barrier to voting is es-

pecially problematic for Native American voters who often are non-native speakers.

The third area is voter ID and bifurcated voter registration system. As the committee is aware, Arizona has a dual-registration system that allows individuals to register to vote with the Federal form for Federal elections only that requires voters in the State and local elections to meet additional voter-approved proof of citizenship requirements.

Testimony revealed that Arizona's bifurcated voter registration system is confusing and may not—and may have prevented voters from participating in State and local elections due to the proof of citizenship requirement.

The State's paper voter registration form is different from the online voter registration form available through service.arizona.com. The State's paper voter registration form provides a space for applicants to add a Tribal ID number that is especially beneficial to our Native Americans citizens but that is unavailable on the online registration system. Therefore, Native Americans who choose to register to vote online face additional challenges when completing their online form.

The last area that we heard testimony on was the restriction on mail-in ballots or what is commonly known as the ballot harvesting law. In March 2016, Arizona passed H.B. 2023 which makes it a felony for individuals to knowingly collect and turn in another voter's completed ballot, even with the voter's permission. There are some exceptions that exist for family members, household members, or caregivers of the voter as identified within the statute.

This is part of ongoing litigation. Last October, 2018, a three-judge panel of the Ninth Circuit upheld H.B. 2023. However, in January of this year the Ninth Circuit granted a full panel review of the small panel ruling. And so that, again, is part of the ongoing litigation.

Thank you for your time.

[The statement of Ms. Van Assche follows:]

**STATEMENT OF
LORENA CHÁVEZ VAN ASSCHE
CHAIR
ARIZONA STATE ADVISORY COMMITTEE
TO THE
U.S. COMMISSION ON CIVIL RIGHTS
BEFORE THE
U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ELECTIONS OF THE
COMMITTEE ON HOUSE ADMINISTRATION

October 1, 2019
PHOENIX, AZ**

Lorena Chávez Van Assche
 Written Testimony
 Phoenix, AZ
 October 1, 2019

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

Lorena Chávez Van Assche
 Written Testimony
 Phoenix, AZ
 October 1, 2019

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

Lorena Chávez Van Assche
 Written Testimony
 Phoenix, AZ
 October 1, 2019

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

Lorena Chávez Van Assche
 Written Testimony
 Phoenix, AZ
 October 1, 2019

elections due to the proof of citizenship requirement. Communities 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. 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.

Lorena Chávez Van Assche
 Written Testimony
 Phoenix, AZ
 October 1, 2019

- 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

Lorena Chávez Van Assche
Written Testimony
Phoenix, AZ
October 1, 2019

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.

Chairwoman FUDGE. Thank you very much.
Ms. Arredondo, you are recognized for five minutes.

STATEMENT OF MONTSERRAT ARREDONDO

Ms. ARREDONDO. Thank you. Chairwoman Fudge, for having me here today and everyone on the panel.

Again, my name is Montserrat Arredondo, and I am with One Arizona. We are a coalition of 20 Federal and 501(c)3 organizations that work to expand voter registration across the State, and we are looking to close a gap between white voters and people-of-color voters in the State.

We were founded in 2010 and have been doing voter registration and civic engagement work for the last 10 years, starting with the Latino community, because of the S.B. 1070 law, and have expanded to other groups like our Native American co-panelists here today. You know, I am going to go right into it.

Empathy towards voting rights for Latinos and First Peoples has run deep amongst Arizona leaders for decades. As unauthorized immigrants to Arizona spiked in mid 2000s, cynical conservative politicians like Joe Arpaio and Russell Pearce once again discovered they could stoke racial animosity for political gain.

One of the first policy outgrowths of the movement was a 2004 white supremacy omnibus ballot initiative entitled in classic old-world fashion as a, "Taxpayer and Citizenship Protection Act." This measure included a voter ID law at first—a first of its kind documentary proof of citizenship requirement for voter registration and new registration on access to public services for certain noncitizens.

While Arizona has in some, but not all respects, moved beyond the overheated anti-immigrant atmosphere of that era, the conservative movement against democracy has only intensified in recent years.

Since Governor Ducey came into office in 2015, we have seen a law making it a felony to collect another voter's ballot, even with that voter's permission, and turning it in to be counted. An expansion of the Arizona Supreme Court allowed Ducey to appoint a courier legislator for anti-Government organizations, the most aggressive local preemption law in the country, designed to—I'm sorry—progressive policy at the local level.

A comprehensive deregulation of the State's campaign finance law attacks on voting rights to use ballot measures designed in the word of the State GOP chair for the ballot initiatives to be thorough and out for minor errors regarding language and paperwork.

Attacks on Arizona's clean election system, a beacon of light in all the darkness, reoccur every legislative cycle.

Additionally, we have failed to take action as a State to administratively ease participation like expanding technology that allows for realtime availability of data and communication between State agencies like postal services, DMVs, et cetera, for rapid updates and verification of registrations. This would also reduce the number of provisional ballots and reduce the number of rejected early ballots.

The following are some of the solutions outlined from a report produced by One Arizona, Arizona Advocacy Foundation, and the Inter-Tribal Council of Arizona.

Extend current voter registration deadlines. Many States have same-day voter registration insight, only minor increases in printing costs. Increase types of identification at all polling locations including student IDs, Tribal ID, and local-issued identification, possibly a library card; reduce rejections of early ballot by allowing ballot postmark on or before Election Day to be counted.

The report continues to outline an action plan to protect and expand voting rights for all eligible Arizonans and that is something that has been turned in to the Subcommittee here as well and we will continue to work in all of our organizations to protect the right to vote.

Thank you for having me here today.

[The statement of Ms. Arredondo follows:]

One Arizona works to improve the lives of Latinos, young people, and single women by building a culture of civic participation.

One Arizona was formed in 2010 as a direct response to the growing disenfranchisement of voters and to the attack on our Latino community in the form of SB1070, best known as ‘the show me your papers’ law. For almost 10 years, One Arizona has worked under a successful collaborative format on civic engagement efforts in statewide, presidential, mid-term, off-year and odd year (municipal) election seasons. Since 2016, One of Arizona has grown to 20 table members, representing a broad tapestry of 501(c)(3)’s organizations coming together to coordinate on voter registration, voter engagement, voter mobilization, election protection, and leadership development.

One Arizona just completed its most successful cycle to date, which succeeded up its previously most successful cycle in 2016. One Arizona coordinated a voter registration effort in 2018 that turned in over 190,000 applications; we turned in over 154,000 in 2016. The impact of that work is being felt across the state as Arizona has elected more POC candidates than ever before and turnout amongst Latinos, POC, young people, and other underrepresented communities is at record highs.

Antipathy towards voting rights for Latinos and First Peoples has run deep amongst Arizona’s leaders for decades. As unauthorized immigration to Arizona spiked in the mid-2000s, cynical conservative politicians like Joe Arpaio and Russell Pearce once again discovered they could stoke racial animosity for political gain. One of the first policy outgrowths of that movement was a 2004 white supremacy omnibus ballot initiative titled, in classic Orwellian fashion, the “Arizona Taxpayer and Citizen Protection Act.” That measure included a voter ID law, a first-of-its-kind documentary proof of citizenship requirement for voter registration, and new restrictions on access to public services for certain noncitizens.

While Arizona has in some (but not all) respects moved beyond the overheated anti-immigrant atmosphere of that era, the conservative movement against democracy has only intensified in recent years. Since Governor Doug Ducey came into office in 2015, we have seen: a law making it a felony to collect another voter’s ballot (even with the voter’s permission) and turn it in to be counted; an expansion of the Arizona Supreme Court, allowing Ducey to appoint a career litigator for Koch-funded anti-government organizations; the most aggressive local preemption law in the country, designed to stifle progressive policy at the local level; a comprehensive deregulation of the state’s campaign finance laws; and attacks on the voters’ right to use ballot measures designed, in the words of the state GOP Chair, “for ballot initiatives to be thrown out for minor errors regarding language and paperwork.” Attacks on Arizona’s Clean Elections system (a beacon of light in all the darkness) recur every legislative session.

Additionally, we have failed to take action as a state to administratively ease participation like expanding technology that would allow for real-time availability of data and communication between state agencies (postal service, DMV, etc) for rapid updates and verification of registrations. This would also reduce the number of provisional ballots and reduce the number of rejected early ballots. The following are some of the solutions from a report produced by One Arizona, Arizona Advocacy Foundation and Inter-Tribal Council of Arizona.

- **Extend current voter registration deadlines**, many states have same-day voter registration siting only a slight increase in printing cost

- **Increase types of identification allowed at the polling place** including student ID, tribal ID, state or local-issued identification (library card)
- **Reduce rejections of early ballots** by allowing any ballot postmarked on or before election day to be counted

The report continues to outline an action plan to protect and expand voting rights to all eligible Arizonans. We are working every day to ensure all those who are eligible to vote are registering and know the process to exercise their right to do so.

Chairwoman FUDGE. Thank you very much.
Mr. Gulotta, you are recognized for five minutes.

STATEMENT OF ALEX GULOTTA

Mr. GULOTTA. Chairwoman Fudge and members, I am Alex Gulotta, the Arizona State Director for All Voting is Local, a collaborative housed at the Leadership Conference Education Fund. We vote—we fight to protect the right to vote. Thanks for having me today.

Voting in Arizona is changing. Since 2013, when five Justices of the Supreme Court ended preclearance in *Shelby County*, these changes in election administration have been made without notice, without transparency, or without analysis of their racial impact. Here are three examples. You have heard some about them of how Arizona voters have been harmed.

First, vote by mail. We have talked about ballot collection. In 2011, the Arizona legislature passed S.B. 1421 that outlawed collection of mail-in ballots by community groups. Historically these drives were conducted by Latinos, African Americans, and Native American communities. The bill was specifically targeted to end these drives, and the US Department of Justice refused to preclear the bill in 2011.

However, in 2016, after *Shelby County*, almost an identical bill was passed, H.B. 2023, the constitutionality of which is on review currently in the Ninth Circuit. However, Chief Judge Sidney Thomas said in his dissent in the panel opinion that is currently on review, quote, “on review” 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 Americans voters from the polls than white voters, close quotes.

Two, polling place changes. Nationwide between 2012 and 2018, there were 1688 poll closures in Section 5 jurisdictions, 230 of those were in Arizona. Maricopa went from 671 to 500. Cochise shrunk from 49 to 17, Cochise County.

Polling place changes cause confusion about where to vote, and in Arizona that means votes get rejected. In 2016, Maricopa voters were switched back and forth between vote centers and assigned polling locations and that made it 40 percent more likely that a voter would cast an out-of-precinct ballot and out-of-precinct ballots don’t count in Arizona at all.

Quoting Ninth Circuit Judge Thomas again “this practice places a discriminatory burden on African Americans, Hispanics, and Native Americans.”

In addition, post-*Shelby*, we made drastic changes to polling place administration without publishing any data on the racial impact of such changes. We have implemented vote centers and new technologies that may, in fact, offer benefits to voters but we have made these changes without doing any analysis of the potential racial impact and that is what really needs to happen.

Third, new ID requirements. Arizona recently expanded the scope of its photo ID—and you have heard a little bit about this—making it harder to cast an in-person ballot, an early in-person ballot. For years, if you voted early in person, you filled out your ballot, you put it in the envelope, and you signed the outside of the

ballot and that was your ID to vote. But in the spring of 2019, the Arizona legislature passed S.B. 1070, requiring a photo ID for in-person ballot, in addition to the voter's signature.

Arizona was not required to seek permission for this because preclearance is gone. Yet this restriction on early voting creates significant obstacles for Native Americans. In Arizona, just 26 percent of Native Americans live on a USPS postal route. To answer Congresswoman Lesko's question, on the PEVL, our Permanent Early Voting List, 80 percent of the people on the PEVL are white, 1 percent are Native American.

Access to early in-person voting matters to Native Americans; but to understand this detriment of this new ID, we just need to look to Navajo County. Travel times are huge, and officials provide early in-person voting at community locations such as at the grocery store and at the Friday flea market. Voters always have their signature with them. But do they have their Tribal ID? Now, without it, they will be deprived of their right to vote in their communities.

In summary, I would like to say that fair and equitable access to the ballot box is a cornerstone of our democracy. We must ensure that every voter can fully participate and that the fundamental right to vote is protected at every level, and that means a restored and modernized Voting Rights Act.

Thank you.

[The statement of Mr. Gulotta follows:]



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. Holder*² 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.

Chairwoman FUDGE. Thank you.
Mr. Hill, you are recognized for five minutes.

STATEMENT OF DARRELL L. HILL

Mr. HILL. Thank you, Chairwoman Fudge, and Members of the Subcommittee. My name is Darrell Hill. I am the Policy Director for the 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 the mission of defending the principles of liberty and equality embodied in our Constitution.

I am going to skip ahead past H.B. 2023 since we have heard a lot about that.

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

Two new laws passed by Arizona legislature and signed by Governor Ducey, S.B. 1072 and S.B. 1090, placed new voter ID requirements to early and emergency voting.

Voter ID requirements disproportionately impact minority voters, senior citizens, voters with disabilities, and others who do not have photo ID nor the money to obtain ID. Approximately 11 percent of all voting-eligible adults have no Government-issued photo identification.

Voter ID laws are often discriminatory and have a discriminatory impact. Twenty-five percent of black Americans of voting age lack a driver's license or a state-issued ID compared to just 8 percent of white Americans.

Voter impersonation fraud, the only type of fraud that ID requirements would prevent, is virtually nonexistent in Arizona and across America. Voter ID laws restrict access to the voting booth by doing nothing to protect against real threats to our voting systems.

Since *Shelby*, Arizona has also seen an increase of poll closures which led to increased barriers to voting. For the Presidential Preference election in 2016, officials closed—opened only 60 locations down from 403 in 2008, a nearly 85 percent decline. The results were chaos. Lower income and minority communities bore the brunt of the impact.

In primarily Anglo communities like Cave Creek, there is one polling place per 8500 residents. In Phoenix, a majority minority city where 40.8 percent of its 1.5 million residents are Hispanic, there is one polling location for every 108,000 residents.

The reduction in polling places across metro Phoenix created long lines at polling centers across the metropolitan areas, forcing some voters to wait up to five hours after the polls closed to cast a ballot.

Arizona voting rights problems are compounded by our incarceration crisis. Not only does the United States continue to lead the world in the rates of incarcerated citizens, it is one of the world's

strictest countries in terms of denying citizens the right to vote due to convictions for crime.

Over 6 million Americans are currently disenfranchised due to a felony conviction. Arizona has the eighth highest rate of felony disenfranchisement in the United States. Over 220,000 possible voters, or 4.25 percent of Arizona voting age population, are ineligible to vote due to a felony conviction. Arizona's rate of felony disenfranchisement has nearly tripled over the last 25 years. Over 150,000 of those of eligible voters in Arizona have completed the full length of their sentence, probation, or parole.

Arizona utilizes a complicated judicial application process where persons convicted of two or more felonies must apply have their voting rights restored at the completion of all terms of their sentence. The decision of whether to restore a person's right to vote is left completely to judicial discretion with no guidance for when a person's rights should be restored. The process leads to flawed, biased outcomes that conditions a person's constitutional right to vote on the ability to persuade judges who have different individualized criteria for restoring voting rights.

The restoration of voting rights should be automatic when released from incarceration. States should pass legislation providing that rights of individuals who are citizens of the United States to vote in any election shall not be denied or abridged because of that individual's conviction of a criminal offense.

In addition, States should no longer use costly restitution, fines, or fees as barriers to the restoration of voting rights. These practices criminalize poverty and exacerbate the racially disparate impact of felon disenfranchisement. States should eliminate repayment of legal financial obligations as a condition for rights restoration.

Voting is a fundamental right and a cornerstone of our democracy. We should strive to make our democracy a beacon to the world. To do so, we must eliminate practices that discourage voter participation and leave the effect—and have the effect of limiting registration rates for communities of color, low-income Arizonans, and other community.

Thank you.

[The statement of Mr. Hill follows:]

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

October 1, 2019

Written Testimony of

Darrell L. Hill
Policy Director
ACLU of Arizona

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 in 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/bills/114/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,

Darrell Hill
Policy Director
ACLU of Arizona

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

Chairwoman FUDGE. Thank you very much.
 Senator, you are recognized for five minutes.

STATEMENT OF HON. MICHELLE UGENTI-RITA

Ms. UGENTI-RITA. Wonderful. Thank you.

Good morning, Chairwoman Fudge and Subcommittee on Elections Members. Thank you for the invitation to address you this morning.

During my nine years as a State legislator, I have been actively engaged in improving Arizona election laws. I evaluate bills based on four criteria: First, does it enhance and protect the integrity of elections? Second, does it empower voters? Third, does it enable voter participation? And, finally, does it improve the maintenance and consistency of the administration of elections?

To be clear, I do not believe election policy should be a partisan issue; and I have a strong history of fighting for these principles that often cut across partisan lines. For example, in 2012, I championed legislation that required all candidates to run in the fall of the even year when turnout is strong, an obvious win-win for everyone.

After the Presidential Preference Election debacle in 2016, brought up several times this morning, when there was mass voter confusion and unacceptable wait times to vote, I convened a special meeting of my Elections Committee to question then-Secretary of State and the then Maricopa County Recorder, both fellow Republicans, to understand what happened and who was responsible. And in 2017, I held the Republican-controlled Maricopa County Board of Supervisors accountable after learning they were operating under an outdated intergovernmental agreement from 1955, allowing the Board to abdicate many of their important statutory obligations regarding the administration of elections.

These are just some of the many examples that demonstrate I am a strong and unwavering nonpartisan advocate of fair and impartial electoral process.

Arizona is, and has been, on the forefront of efforts to increase voter turnout and participation, all the while protecting the process from fraud. Sadly, as the saying goes, no good deed goes unpunished, resulting in some of those efforts to increase voter participation, specifically the enactment of mail-in voting, to be abused by ballot harvesting.

My bill successfully banning the practice of ballot harvesting which allows third parties to collect or harvest mail-in ballots of individual voters is a major step forward in maintaining the ability of Arizonans to participate in the electoral process via the mail without fear of it being manipulated.

Many political operatives and activists criticize this common-sense prohibition, claiming it unduly burdens voters by making it more difficult to return their mail-in ballot. This claim is simply not supported by the facts. Arizona's mail-in system is a voluntary one, whereby voters voluntarily elect to receive their ballot via mail, fill it out, and return it within the generous 27-day early voting period. And it is counterintuitive to think that a voter would sign up to participate in a process, presumably for its benefits, and in this case for the convenience of having their ballot mailed to

them, then criticize that very process as burdensome when mailing it back in the prepaid envelope that accompanied their ballot.

Again, it is difficult to believe someone who using the mail to pay bills and send and receive other correspondences would only struggle when it came to mailing back their ballot and not struggle with their other mail.

Mailing a ballot back is not the only option available in Arizona. Arizona allows for many other methods to return a mail-in ballot. However, opponents of my anti-ballot harvesting bill continue to argue that the bill burdens voters despite the fact that the Ninth Circuit Court of Appeals decision upholding the law, they note, and this is important, they note that not a single voter testified at trial that H.B. 2023 made it significantly more difficult to vote. In fact, the bill was in place for the 2016 elections when voter turnout was a roaring 74 percent.

Voting by mail is only one of the many options available in Arizona. It is easy and convenient to vote in the State of Arizona. If you are not voting, it is because you have chose not to.

Arizona should be commended for adhering to its constitutional responsibility of enacting laws to secure the purity of elections and guard against abuses that is in our Constitution, often in the face of unsubstantiated and, frankly, offensive claims of voter suppression and racial motivations.

The proponents of ballot harvesting have failed. They have failed to provide any meaningful evidence, statistical data, or direct testimony, during the legislative process, as well as the bench trial, that breaking the chain of command and entrusting a third party to collect a voter's mail-in ballot is in the public's best interest.

We are, unfortunately, forced to conclude that only outside forces and special interest groups have a vested interest in protecting the practice known as ballot harvesting. We as legislators cannot allow for the potential of lost ballots, undue influence, and fraud to taint our electoral system. Voting is the most direct method to impact Government, and the process should be protected to ensure voters have confidence in the system and its outcomes. And I ask you: What is the outcome of an election worth if nobody believes in it? The risks are high, and our democracy is only as strong as our fair and open elections. The solution, painfully simple: Secure our elections, protect the process from cheating, and enforce our current laws. My bill banning the practice of ballot harvesting gets us one step closer to that ultimate goal.

Thank you, Subcommittee Members.

[The statement of Ms. Ugenti-Rita follows:]

Good morning Chairperson Fudge and members of the Subcommittee on Elections. Thank you for the invitation and opportunity to address this committee regarding voting rights and election administration in Arizona.

During my nine years as an Arizona State legislator for District 23 I have been actively engaged in improving Arizona's election laws. I evaluate election bills based on four criteria: First, does it enhance and protect the integrity of elections; second, does it empower voters; third, does it enable voter participation; and finally, does it maintain the consistency of the administration of elections. To be clear I do not believe election policy should be a partisan issue. I have a strong history of fighting for these principles that often cut across partisan lines.

For example, in 2012 in an effort to stop voters from being disenfranchised by having candidate elections during unfamiliar timeframes when turnout is dismal, I championed legislation that requires all candidates to run in the fall of the even year, when voter turnout is strong, an obvious win/win for everyone. After the Presidential Preference Election (PPE) debacle in 2016 when there was mass voter confusion and unacceptable wait times to vote, I convened a special meeting of my Elections Committee to question then Secretary of State and then Maricopa County

Recorder, fellow Republicans, to understand what happened and who was responsible. In 2017 I held the Republican controlled Maricopa Board of Supervisors accountable after learning they were operating under an outdated intergovernmental agreement from 1955, allowing the board of supervisors to abdicated many of their important and statutory obligations regarding the administration of elections. And in 2018 in the face of republican party establishment opposition I introduced a bill to prohibit precinct committeemen from voting no more than two proxies at a political party meeting. This was done for the same reason I introduced the ban on ballot harvesting, both are ripe for manipulation. Any convenience that the harvesting of *proxies* or *ballots* may offer can never be allowed to compromise the integrity of our elections as a whole because when that happens we have surely lost our Republic. As these examples demonstrate, I have been a strong and unwavering non-partisan advocate of a fair and impartial electoral process.

Arizona is and has been on the forefront of efforts to increase voter turnout and participation all the while protecting the process from fraud. Sadly, as the saying goes, no good deed goes unpunished, resulting in some of those efforts to increase voter participation, specifically the enactment of mail-in voting to be abused by ballot harvesting. My bill, successfully banning the practice of ballot harvesting, which allows third parties to collect or “harvest” the mail-in ballots of individual

voters, is a major step forward in maintaining the ability of Arizonan's to participate in the electoral process via the mail without fear of it being manipulated.

Many political operatives and activists have criticized this common sense prohibition, claiming it unduly burdens voters by making it more difficult for them to return their mail-in ballot. This claim is simply not supported by the facts and it invalidates the premise that ballot harvesting is even necessary. Arizona's mail-in system is a voluntary one, whereby voters voluntarily elect to receive their ballot via the mail, fill it out and return it within the generous 27-day early voting period. It is counterintuitive to think a voter would sign-up to participate in a process presumably for its benefits, (in this case the convenience of having their ballot mailed to them) then criticize the very process as burdensome when mailing it back in the prepaid envelope that accompanied their ballot.

Again, it is difficult to believe someone who uses the mail to pay their bills and send and receive other correspondence would only struggle when it came to mailing back their ballot and not struggle with their other mail. In my opinion mailing a ballot back is the easiest of the options, but it certainly is not the only option available. Arizona allows for many other methods of returning a mail-in ballot. For example, ballots can be dropped off at any authorized election office or vote center prior to election day or they can be dropped off at any polling location on election

day. However, opponents of my anti-ballot harvesting bill continue to argue that the bill burdens voters, despite the fact that in the ninth circuit court of appeals decision upholding the law, they note that not a single voter testified at trial that H.B.2023 made it significantly more difficult to vote. In fact, the bill was in place for the 2016 election, where voter turnout was a roaring 74.17 percent. I too can attest to never hearing from a voter who utilizes the ballot harvesting process tell me without it they would be unable to participate in the election process. Remember, voting by mail is only one of the many ways Arizona allows voters to vote. It is easy and convenient to vote in Arizona. If you are not voting it is because you do not want to.

Arizona should be commended for adhering to its constitutional responsibility of enacting laws to secure the purity of elections and guard against abuses (Ariz. Const. Article VII, Section 12) often in the face of unsubstantiated and frankly offensive claims of voter suppression and racial motivations.

The proponents of ballot harvesting have failed to provide any meaningful evidence, statistical data or direct testimony during the legislative process as well as at trial, that breaking the chain of custody and entrusting a third party to collect a voters mail-in ballot is in the public's best interest. We are unfortunately forced to

conclude that only outside forces and special interest groups have a vested interest in protecting the practice of ballot harvesting. We as legislators cannot allow for the potential of lost ballots, undue influence or fraud to taint our electoral system. Voting is the most direct method to impact government and the process should be protected to ensure voters can have confidence in the system and outcomes. I ask you, what is the outcome of an election worth if nobody believes in it? The risks are high and our democracy is only as strong as our fair and free elections. The solutions are painfully simple, secure our elections, protect the process from cheating and enforce our current laws. My bill, banning the practice of ballot harvesting gets us one step closer to that goal. Thank You.

Chairwoman FUDGE. Thank you.

Mr. Butterfield, you are recognized for five minutes.

Mr. BUTTERFIELD. Thank you very much, Madam Chairwoman.

Thank you to the six witnesses for your testimony today. It is very valuable.

Let me address my questions to the gentlelady from the Sandra Day O'Connor College of Law, Bohnnee.

How do you pronounce your last name?

Ms. FERGUSON-BOHNEE. Bohnnee.

Mr. BUTTERFIELD. Bohnnee. Bohnnee. I got it. Like Bonnie Watson Coleman, one of our colleagues.

We have talked extensively about the absence of Section 5 and what impact it is having on the right to vote. Let me focus my remarks and my questions on Section 2.

Before I went to Congress, I was a judge in my State for 15 years. But before that, I was a voting rights attorney back in the 1980s. So, I know the subject matter quite well. I am not a legal scholar on it, but I know it quite well. Section 2 is a very powerful instrument. It is a very expensive instrument, but it is very powerful.

Have there been any Section 2 cases filed in Arizona in recent memory?

Ms. FERGUSON-BOHNEE. Yes. Thank you for the question.

I have actually been involved in several Section 2 cases in the State of Arizona, one after the 2000 redistricting on behalf of the Navajo Nation. Also, the voter ID litigation that was brought on behalf of the Navajo Nation and other Native Americans citizens in the State of Arizona. Currently, we have litigation ongoing in Federal District Court, dealing with the lack of access to early voting, voter registration, and noncompliance with Section 203 of the Voting Rights Act.

So, there is litigation, but Section 2 isn't a viable replacement to Section 5. It is very expensive and time consuming.

Mr. BUTTERFIELD. Section 5, the burden of proof is on the jurisdiction—

Ms. FERGUSON-BOHNEE. Right.

Mr. BUTTERFIELD [continuing]. To prove absence of discriminatory impact?

Ms. FERGUSON-BOHNEE. Right.

Mr. BUTTERFIELD. And in Section 2, the burden is on the plaintiff.

Ms. FERGUSON-BOHNEE. That is right. As you have heard, as you probably know, Tribes have limited resources; and they shouldn't be shouldered with the burden to bring cases to ensure that the right to vote is protected.

I just want to give you an example with regards to the last round of redistricting in the State of Arizona. We have an Arizona Independent Redistricting Commission. It was the first time that the commission consulted an expert to determine whether or not the maps retrogressed, and it was the first time that the State of Arizona received preclearance on the first try.

And for Tribes in the State of Arizona, we have one majority-minority district; and there is a concern that without Section 5, that the impact of redistricting on Native Americans voters will not be

considered and potentially lose that majority-minority Native Americans district.

Mr. BUTTERFIELD. Can you give me a ballpark figure about how much the average Section 2 case, fully litigated, would cost in the State of Arizona?

Ms. FERGUSON-BOHNEE. Fully litigated.

Mr. BUTTERFIELD. Just on the average. I know there are extremes, but on average.

Ms. FERGUSON-BOHNEE. I mean, I think without revealing any confidences or anything like that—

Mr. BUTTERFIELD. Well over \$100,000, much more?

Ms. FERGUSON-BOHNEE. Up to \$1 million, because you have to have experts who testify on your behalf and have, you know, many resources for these cases.

Mr. BUTTERFIELD. Has the Department of Justice initiated any Section 2 cases in Arizona?

Ms. FERGUSON-BOHNEE. The Department of Justice for the two decades I have been working in voting litigation in the State of Arizona has not initiated any cases on behalf of Tribes.

Mr. BUTTERFIELD. Let me use my last minute and a half with you, Mr. Hill. Thank you. Thank you for your testimony today. I want to talk about restoration of voting rights. Are there any Arizonans who are convicted felons who have completed their sentences, completed their obligations to the court, who have not been allowed to register to vote?

Mr. HILL. Absolutely, Representative Butterfield.

Mr. BUTTERFIELD. These are American citizens, living in Arizona, who have completed their obligation to the court system, who are not allowed to vote.

Mr. HILL. Absolutely. A couple of years ago, the ACLU did a records request to the Maricopa County Superior Court, seeking information about people who had restored—attempted to restore their right to vote. What we found was that, I believe, 25 percent of those persons had been denied their restoration due to owing fines, fees, or some other financial obligation. Of the people, of those people who were denied the right to vote, another 25 percent owed no financial obligations.

So, they had fully completed their sentence. They had paid all their financial obligations. But the court had still denied their right to vote, and at the time, there was no explanation for why.

Mr. BUTTERFIELD. They are over 18 years of age. They are American citizens?

Ms. ARREDONDO. Yes.

Mr. BUTTERFIELD. And not allowed to vote?

Ms. ARREDONDO. Yes.

Mr. BUTTERFIELD. In both State and Federal elections, or just State elections?

Ms. ARREDONDO. Both State and Federal elections.

Mr. BUTTERFIELD. Is there any ongoing litigation currently to address that?

Ms. ARREDONDO. Not in Arizona, not that I am aware of.

Mr. BUTTERFIELD. Anyone aware of any litigation presently to address the issue of restoration of voting rights?

Well, thank you so very much for your testimony.

Madam Chairwoman, I will yield back.

Mr. AGUILAR. I will recognize myself, Mr. Butterfield.

Mr. BUTTERFIELD. May I seek a point of personal privilege, Madam Chairwoman?

Chairwoman FUDGE. Yes.

Mr. BUTTERFIELD. I am trying to inquire about the ladies in the audience wearing red. Is there any significance about that with your sorority?

Chairwoman FUDGE. My sorority sisters, Delta Sigma Theta, are in the audience.

Mr. BUTTERFIELD. Thank you. I yield back.

Mr. AGUILAR. You can always count on the Chair to bring some friends.

Thank you, Madam Chairwoman.

I am going to ask two questions and if our panelists—because of the limited time, I do apologize, but if you could give me a yes-or-no answer. This is based on the prior panel and also on the testimony that you gave us today.

My first question, Ms. Bohnée, I am going to put you on the spot first, and we will try this. We will see how this goes. Does the closure of polling locations have a disparate impact on minority populations in Arizona?

Ms. FERGUSON-BOHNEE. Yes.

Mr. AGUILAR. Ms. Van Assche?

Ms. VAN ASSCHE. My testimony is relying on findings in our advisory memorandum, and we didn't reach a yes-or-no answer on that. Based on that, I will abstain from answering.

Mr. AGUILAR. I appreciate it. Ms. Arredondo?

Ms. ARREDONDO. I would say yes.

Mr. AGUILAR. Mr. Gulotta?

Mr. GULOTTA. I would say yes.

Mr. AGUILAR. Mr. Hill?

Mr. HILL. I would say yes.

Mr. AGUILAR. Senator?

Ms. UGENTI-RITA. I think it is important to note that those who choose the polling locations are the County Board of Supervisors. So, it is the most relevant question for them. So, what they choose as polling locations is based on their information and their due diligence.

Mr. AGUILAR. You don't have any opinion on whether that disproportionately affects minority populations?

Ms. UGENTI-RITA. I think the polling locations suffice; but if more polling locations are needed, then you need to go to the more appropriate governmental jurisdiction, which is the county board of supervisors and the Maricopa County Recorder. Both of those entities are in charge with choosing polling locations and vote centers.

Mr. AGUILAR. Understood.

Ms. Bohnée, do residency challenges and lack of language assistance have a negative impact on Native Americans participating in State and local and Federal elections?

Ms. FERGUSON-BOHNEE. Yes. May I add something to that?

Mr. AGUILAR. Yes.

Ms. FERGUSON-BOHNEE. So in the State of Arizona—I think Governor Lewis and President Nez said this, but I just want to reit-

erate that Native Americans, most Native Americans, do not receive mail at their homes, that, in addition to not having access to transportation or receiving mail at their homes, that the roads are in poor condition primarily in Indian Country. So without that access, it becomes a challenge to participate in any vote by mail.

And I also want to note that in the State of Arizona and different counties, that people have been defaulted to the PEVL, so the Permanent Early Voting List. So, if they did not choose that, sometimes they were defaulted by the county and they cannot be expected to participate in early voting and then go to the polls and have to complete a provisional ballot, and that is contrary to Arizona law, but that is the realities on the ground.

Mr. AGUILAR. I appreciate it.

Ms. Van Assche, I will ask it again. Do residency challenges and lack of language assistance have a negative impact on Native Americans participating in State, local, and Federal elections?

Ms. VAN ASSCHE. Yes.

Mr. AGUILAR. Ms. Arredondo?

Ms. ARREDONDO. I would say yes, and I just want to bring back testimony from President Nez that only one in 10 Native Tribe members own a vehicle, and there is no public transportation on Native—on the Navajo reservation, along with some folks having to travel anywhere from 60 to 90 miles to get to their polling location. So, I just want to bring that back. That is a far way to go to vote on Election Day.

Mr. AGUILAR. Thank you.

Mr. Gulotta?

Mr. GULOTTA. I would say yes also, just because there are many, many people who actually need the ballot translated to be able to access our franchise. My Lyft driver this morning, her mother, she was telling me this story about how her mother had to have her ballot translated to be able to vote. That is what allows people to access the franchise; and without those kinds of protections, you know, we really can't have our Native American community members participating the way we want them to.

Mr. AGUILAR. Thank you.

Mr. Hill?

Mr. HILL. I would say yes. When you look at the combination of poverty in many of the Native American communities, lack of Internet access to access online voting, online registration opportunities, coupled with the lack of transportation and language access issues, it presents a real barrier for Native American communities to vote in Arizona.

Mr. AGUILAR. Senator?

Ms. UGENTI-RITA. Thank you, sir. No.

Mr. AGUILAR. Thank you.

I will do this to Mr. Gulotta and Ms. Van Assche based on your research, as well as the groups that you represent. Some people are going to say that the polling closures are a reaction to declining in-person voting. Why would that be right or wrong?

Mr. GULOTTA. It may, in fact, be true. The problem is, since preclearance, we no longer study the impact of closing polling locations. And so, we don't know who gets harmed. We do know from Judge Thomas' dissent in the *DNC v. Reagan* case, we do know it

significantly statistically increases the use of out-of-precinct ballots, which means people's voting rights are denied. Because people are confused, they go to the wrong place, they are given a ballot that then doesn't get counted, and that is really a travesty, and we have got to figure out a way to correct that problem.

So, maybe it is more education. Maybe it is more outreach. But maybe it is more polling places, and without preclearance, we don't really know because we don't study these things anymore.

Mr. AGUILAR. Thank you.

Ms. Van Assche, quickly.

Ms. VAN ASSCHE. And I missed that question, if you can repeat it.

Mr. AGUILAR. Some people are going to say that the polling closures are a reaction to declining in-person voting. Based on your research, would that be right or wrong?

Ms. VAN ASSCHE. I think the testimony that we got from, at least, Maricopa County election officials, was that the reason for the reduction was the decrease in demand and the increase in early-voting preference, but that was one side of the issue. I don't think we received testimony on the other side. So, I don't know that that is—again, it is an elected official. Though their testimony is valuable, perhaps it is one-sided; and I don't think that the testimony really supported that beyond that person's testimony.

Mr. AGUILAR. The answer could be we need more data.

Thank you so much.

Thanks, Madam Chairwoman.

Chairwoman FUDGE. Thank you.

Ms. Lesko, you are recognized for five minutes.

Ms. LESKO. Thank you, Madam Chairwoman.

And, Madam Chairwoman, I hope you will remind the audience not to boo or heckle any witnesses.

Thank you.

Chairwoman FUDGE. This is an official Congressional hearing. We would ask that you would be respectful of all of our witnesses.

Thank you.

Ms. LESKO. Thank you.

Again, thank you, all of the witnesses for coming here today; and I especially enjoyed the first panel because I need to hear firsthand the unique problems that our Native American members have.

I think most—what I have heard so far is that we need more polling locations. We can't use a Tribal ID number online. I don't know if that is still the case. That was in 2018, correct? Okay. We need to train poll workers better. It basically brought up about disabled folks and other folks and that somehow we are automatically putting people on the PEVL list, the county recorder.

So, I just want to say, most of these problems seem to be, should be solved at the State or county level, and they should be, and that is why I encourage everyone to reach out to their county and State election officials.

And the long lines in 2016 were brought up many times, and as many of you know, but maybe not my colleagues from out of the State, that was the voters spoke up loud and clear, and they ousted that election director and installed a new one.

And on the Federal issue of more post offices, that was brought up, too, on Native lands. That is a Federal issue, and that I would like to work on.

I do have questions for Senator Ugenti-Rita. You had brought up about your bill, H.B. 2023, which bans ballot harvesting. Why do you think that was necessitated?

Ms. UGENTI-RITA. Yes, thank you for the question.

While election issues generally and ballot integrity and specifically have been my primary focus as a legislator, and I take very seriously the responsibility to ensure the electoral process has integrity. Voters trust it and want to participate in it. Therefore, when I heard from constituents about the issue, I started to do my own due diligence on it and quickly realized something had to be done.

Frankly, I believe ballot harvesting flies in the face of fair and impartial elections, and as the Chair of House Elections Committee at the time; I decided to do something about it and introduced my bill to ban the practice.

Ms. LESKO. And thank you, Senator Ugenti-Rita.

Do you think this would benefit, the same bill would benefit other States? Because there was a concern that was noted in some media reports in California. There is a belief that about seven Republican seats were flipped because of ballot harvesting.

Ms. UGENTI-RITA. Yes. Thank you. And let's not forget North Carolina.

But, absolutely, every State that cares about their elections should follow Arizona's lead.

Ms. LESKO. And thank you.

And I do want to bring up kind of a—maybe I got it wrong, but most of the President and the Governor of the Indian Nations said that most of their members like to vote in person, and that is part of tradition and that type of thing. So, I do think we need to look at more polling locations in the Indian Nation or Native American Nation. Then that wouldn't be affected by your ballot harvesting bill, because that just deals with early voters, correct?

Ms. UGENTI-RITA. Correct. My ballot harvesting bill ban only deals with voting early by mail. So, it only deals with those ballots that are sent to a voter in the mail. So, if you chose to vote early, in person, or chose to vote in person day of, you would not be affected by the ballot harvesting ban.

Ms. LESKO. And thank you.

And there seemed to be some question about what family members could carry a ballot. And so, I have the bill in front of me and it says a family member means a person who is related to the voter by blood, marriage, adoption, or legal guardianship. So, some of the examples given that like your grandmother couldn't take it or your uncle, is that inaccurate?

Ms. UGENTI-RITA. Yes. And also in the litigation, the plaintiffs did not challenge the definitions of those exceptions. So, that would lead me to the assumption that they didn't find those exceptions to be problematic.

Ms. LESKO. Thank you.

And since this law has been in effect for two years—two cycles, election cycles now, has there been any complaints filed that you know of?

Ms. UGENTI-RITA. Excellent. Not only has there not been a complaint that I am aware of, I am not even aware of others receiving complaints in the community and, of course, the district court judge noted that no complaint was made at trial. No one testified that they were precluded from voting because of the ban.

Ms. LESKO. Thank you.

Chairwoman FUDGE. Thank you.

Mr. Gallego, you are recognized for five minutes.

Mr. GALLEGO. Thank you.

It is good to see you here, Representative. Senator, is it now?

Ms. UGENTI-RITA. Yes. Senator.

Mr. GALLEGO. All right. I have known you for a long time, worked with you for a long time. I know you are very passionate about these issues. What bills are you thinking about introducing next year when it comes to voting issues, voting ballots, ballot harvesting, or permanent early voter lists?

Ms. UGENTI-RITA. Thank you for the question. It is good to see you. I have known you for a long time now.

I am looking at taking on the topic of the voting manual to make sure that that goes through a proper vetting process. That does come with the enforcement of law, so we do need to make sure that what is included in that manual are things that the county and other local officials can follow.

Mr. GALLEGO. Limited time. What about, did you—are you going to introduce the bill that makes the permanent early voter list not permanent, like you did last time?

Ms. UGENTI-RITA. Well, in the—it is called permanent early voting list, so by definition, it is supposed to be only permanent if you vote early. But if you want me to introduce it, I totally will.

Mr. GALLEGO. So you did introduce—so just to clarify for the panel and everyone here, last year, you introduced a bill that said that if you did not vote in how many past elections, you are going to get picked off the permanent early voting list. Is that correct?

Ms. UGENTI-RITA. Yes.

Mr. GALLEGO. Okay. What were the other restrictions that came along with that legislation?

Ms. UGENTI-RITA. I don't recall. Is there one that you want to bring up, and I will answer it?

Mr. GALLEGO. I believe there was something about that they would be restricted to also not be allowed to drop off their ballot.

Ms. UGENTI-RITA. Oh, okay. Yeah. That is a different bill. I thought you were talking about the first one. Yes.

Mr. GALLEGO. Can you describe that bill where you are not going to be allowed to drop off your ballot at the ballot—at the polling place?

Ms. UGENTI-RITA. Yeah, absolutely. I am happy to. So a part of what—some of the problems Arizona has been experiencing is very long timeframes to get election results. Timeliness is important. It is an important part of the electoral process. And so we need to make sure that the results of elections are indeed timely. What happens—what happens—what happens is—

Mr. GALLEGO. So couldn't you actually just—couldn't you actually subsidize the county—

Ms. UGENTI-RITA. What happens—what happens is—

Mr. GALLEGO [continuing]. So they could just count ballots sooner instead of trying to restrict people turning in ballots?

Ms. UGENTI-RITA. Sir, do you want to listen to the answer?

Mr. GALLEGO. Yes.

Ms. UGENTI-RITA. I will give it to you.

Mr. GALLEGO. Good.

Ms. UGENTI-RITA. Okay. So what happens is because a lot of these ballots are dropped off day of, and statutorily, you are not allowed to verify the signature or open them until after 7 p.m. On election day, they contribute to the delay in the results. If you were to mail back your ballot, which I think is what the system is designed to do, it does come with a prestamped envelope. That would go a long way in reducing—

Mr. GALLEGO. Great. I am going to reserve my time back.

Mr. GULOTTA, is there a better solution than trying to disfranchise thousands of Americans—Arizonans than this?

Mr. GULOTTA. Yes. I mean, we already have a process for removing people from the voting rolls under the—under the—

Mr. GALLEGO. Well, let's just get to like the actual dropping off of ballots. Is there a better process in doing this than stopping people from dropping off ballots?

Mr. GULOTTA. Yeah. We can just start counting them sooner. We have the right to start counting them sooner. We just preclude people from counting them sooner.

Mr. GALLEGO. Yielding back my time.

Representative—Representative, back to your bill on ballot collection. Did you have Tribal consultation while you were creating that law?

Ms. UGENTI-RITA. Yes. Excellent question. The bill was the result of a legislative stakeholder process, which means that it was assigned and heard in the appropriate committee and passed out. It was then debated in committee of the whole, the entire chamber, and then received the majority of votes needed to pass out of each chamber and then signed by the Governor into law.

Mr. GALLEGO. Okay. And I understand that. I was a State representative with you. But did you speak to any Tribal nations, organizations before you passed that law to try to get their input while you were crafting that legislation?

Ms. UGENTI-RITA. Right. Well, in committee, it is open to the public and any other vested stakeholder who wants to come in and register their either opposition or support of the bill.

Mr. GALLEGO. Okay. So you understand—why some of us are concerned that there wasn't Tribal consultation. Will you have Tribal consultation going forward? Will you actively work with Tribal organizations before you create these types of legislation in the future?

Ms. UGENTI-RITA. I did by introducing the law and having it go through the appropriate process.

Mr. GALLEGO. But you did not do a reach out, a reach-out program to them or anything?

Ms. UGENTI-RITA. Yes. I had—I had the bill in committee.

Mr. GALLEGO. Okay. Representative Ugenti—sorry. Senator Ugenti, how many Tribes are there—how many federally recognized Tribes are there in Arizona?

Ms. UGENTI-RITA. I don't know that number, sir.

Mr. GALLEGO. There are 21. You have been a State representative and a State senator elected I think since 2010, and you are crafting legislation that affects Native Americans, but you don't know how many federally recognized Tribes are in Arizona. This is why you should probably—

Ms. UGENTI-RITA. I will answer that.

Mrs. LESKO. Madam Chairwoman, can you tell the audience not to interrupt, please?

Mr. GALLEGO. Please audience, no participation.

So this is why I suggest, if you are going to write up more legislation, you should probably have active participation and actually invite Tribes since you yourself do not even know how many Tribes are in Arizona.

Thank you. I yield back my time.

Chairwoman FUDGE. Thank you.

Mr. Stanton, you are recognized for five minutes.

Mr. STANTON. Thank you very much. Thank you very much, Madam Chairwoman. I also have a few questions for the Senator.

Thank you for coming earlier here today, and you did have the opportunity to hear our two outstanding Tribal leaders testify on their concerns about the impact on Tribal voting participation as a result of H.B. 2023, the ballot collection bill.

In your testimony, both written and verbal here today, you said that you are “forced to conclude that only outside forces and special interest groups could oppose H.B. 2023.” Do you consider Arizona's Tribal communities “outside forces” or, “special interest groups?”

Ms. UGENTI-RITA. No.

Mr. STANTON. Were you aware of Tribal opposition to your bill before today?

Ms. UGENTI-RITA. Yes, sir.

Mr. STANTON. Then why would you characterize Tribal communities as “special interest groups” or, “outside forces” in your testimony?

Ms. UGENTI-RITA. Look, I am going to quote what the Ninth Circuit District Court of Appeals said when they evaluated this bill in their decision. The panel held that the district court did not err in holding that H.B. 2023 violated the First and 14th Amendments because provisions imposed only a minimal burden on voters and were adequately designed to serve Arizona's important regulatory interests. The court defined—in their opinion, referred to those burdens as *de minimis*, meaning too trivial or minor to even merit consideration. I support the bill because there is not enough evidence to suggest that banning this practice hurts anyone.

Mr. STANTON. After hearing the testimony today of the Tribal leadership and the impact on their members as a result of the bill you championed in the legislature, do you consider that to be, quote, *de minimis* on—the impact on their Tribal members?

Ms. UGENTI-RITA. Yes. I agree with the Ninth Circuit Court of Appeal's decision upholding the District Court. I also remember hearing, and the prior panelists tell me, that many of the Native

American communities prefer to vote in person. And I think it was brought up earlier by Congresswoman Debbie Lesko, and I will reiterate that my bill only deals with mail-in voters.

Mr. STANTON. Did you or any members of your staff invite Tribal participation at the hearing before the Elections Committee that you chaired on H.B. 2023? That is a yes or no question.

Ms. UGENTI-RITA. It is open to the public.

Mr. STANTON. Senator, your written testimony states that “it is difficult to believe that someone who uses the mail to pay their bills and send or receive other correspondence would only struggle when it came to mailing back their ballot and not struggle with other mail.”

Before today, were you aware of the unique issues members of our rural Tribal communities face when it comes to mail?

Ms. UGENTI-RITA. Yes. Thank you for the question. And I think I brought this point up earlier in my statement. Why would you elect to receive something by mail that then became a problem for you? So if you are going to sign up for something that presumably is going to offer you a convenience, then it would make sense that that convenience would last longer than just receiving the ballot, but it would also be there for you to return it. Again, this is an elective system in Arizona. Other States are different, but in Arizona, if you want to participate in mail-in voting, you have to make the effort to sign up for it. Nobody forces you.

Mr. STANTON. After hearing—thank you. After hearing from Governor Lewis and President Nez, do you agree that perhaps H.B. 2023 is having a uniquely negative impact on our Tribal communities and that it would be worth revisiting these issues in the next Arizona legislative session?

Ms. UGENTI-RITA. Sir, no, I don’t. And I would also like to note that there are very reasonable exceptions in the law. So it is a very small amount of people that we are talking about that perhaps would be affected. Remember, these exceptions are caregiver, household member, and family member. That, coupled with the fact that I heard that most individuals in the Tribal community prefer to vote in person or at least perhaps in person early, I don’t think this will have a large effect.

Mr. STANTON. Thank you so much.

Ms. UGENTI-RITA. And again, the courts described it as *de minimis*.

Mr. STANTON. I think it is unfortunate and sad that our Tribal leadership was not reached out to before this bill was passed in our State legislature. When I think of the last few minutes, they demonstrate that when important decisions are made at the State capital that have a direct impact on our Native American population, too often these citizens are forgotten. They aren’t at the table. And when they voice their concerns, they are dismissed as, quote, “outside forces or, special interest groups.”

It is puzzling and frustrating to me that at a hearing on an important voting rights issue that could go on for more than 2 hours as the hearing in Arizona legislature did, nobody thought to ask for the opinions of our Tribal leaders. Nobody who wanted to push this bill seemed to care. And, my friends, that is exactly why the Voting Rights Act was so important and why the Supreme Court’s decision

was so harmful to so many Americans, because the rights of our minority are too often shut out by the interests of the majority.

I am proud to be a co-sponsor of the Native American Voting Rights Act, and this hearing has shown today why we need it and has strengthened my resolve to fight for it.

Thank you, Madam Chairwoman. I yield back.

Chairwoman FUDGE. Thank you.

Mr. Grijalva, you are recognized for five minutes.

Mr. GRIJALVA. Thank you, Madam Chairwoman.

Director Bohnee, I am trying to put a nexus, a Federal nexus, an important role for Congress, the Voting Rights Act, obviously, but the trust responsibility that is inherent in the Constitution with native nations and indigenous people in general. The relationship for the discussion we are having here today and that trust responsibility, as you see it.

Ms. FERGUSON-BOHNEE. Yes. Well, I mean, obviously there have been issues with Tribes in voting, and the U.S. has a trust responsibility. And I think as Mr. Butterfield asked, have there been Section 2 enforcement actions taken on behalf of Tribes in the State of Arizona? No, there haven't. Have counties failed to comply with Section 203? No, they haven't. But have there been enforcement actions taken on behalf of native peoples? No, there haven't.

In Arizona, 5 percent of the population is Native Americans. They comprise over 27 percent of the land base. Only 18 percent of the land in the State of Arizona is privately held. So there is going to be a disproportionate impact when people who live in cities and urban areas are making decisions and not considering the impacts on our rural communities, who often don't have access to mail. But also, we have communities who don't have access to utilities or even running water. And those are the realities on the reservation.

And so the Federal Government should step in, ensure that Native Americans have polling locations and access to early voting and voter registration.

Mr. GRIJALVA. If nothing else, under the mandate of the trust responsibility.

Ms. FERGUSON-BOHNEE. Yes.

Mr. GRIJALVA. Okay. Thank you.

Mr. Gulotta, did I get it right?

Mr. GULOTTA. Yes, sir.

Mr. GRIJALVA. We have heard a lot today about the purity, to some extent, the integrity of the voting process. You know, the administration, this administration tried, on the same issue of voting and integrity had, I think, Chris Kobach or somebody run a committee for a while that went nowhere, and then quietly, and thank God, it disappeared into the night. But the point I am making is that there is a national strategy on the issue of suppression, whether you want to hear it or not, and that it targets poor people, people of color, and in the instance that we are discussing here today, indigenous people and Tribal lands.

I want to ask you about that, that national, and then we are talking here in Arizona, where it seems to be that the underlying agenda in that targeting is keep the power in certain hands and keep the political policies in a certain direction. And so let's talk

about strategy, not necessarily the legal one, but the political ramifications of not enforcing and doing the right thing with the Voting Rights Act in terms of extending protections of preclearance and trust responsibility that was added to the agenda. Sir?

Mr. GULOTTA. Thank you, Congressman. I think the real issue here is just the cumulative effect of all of these attacks on people's voting rights. H.B. 2023 attacks the right to do ballot collection. S.B. 1072—so we say, you know, you don't need mail. So then we look at S.B. 1072, but now you need an ID for early in-person voting. We make it harder to vote in person early because now we need an ID on top of our signature. We have made that harder.

We have a bill that tries to criminalize voter registration that didn't pass the last session. We had a bill that didn't pass last session that was designed to prevent people from dropping their ballots off at the polling place. There was a bill that was going to purge people from our permanent early voting lists, and it goes on and on and on. And they are part of a concerted strategy to, in fact, disfranchise people from voting.

And if you read the dissent in *DNC v. Reagan* I think you will get a good understanding of exactly what is happening and why and that it really is targeted at hurting people of color, and we should fight back against that. And the biggest weapon for people of color against this kind of voter suppression is preclearance, because preclearance shifts the burden of proof from the voter to the government. And if the government, whether it is the local—the Secretary of State or whether it is the local registrar, when they decide to take action, they have to prove that they are not hurting people. And that makes a huge, huge difference, and that is why we need to get back to preclearance.

Mr. GRIJALVA. Madam Chairwoman, I yield back, and thank you again for conducting this hearing and having it here in Arizona.

Chairwoman FUDGE. Thank you so much.

I want to thank you all, but I am going to ask you, so I will give you a minute to think about it. If there is one thing that you want us to do when we get back or one action you want us to take or one thing that you think that we should focus on from your testimony today, tell us what that one thing is. And I am going to give you a minute because I want to ask a couple of questions.

First, let me just make a statement. I think that there is some confusion about what the Federal Government is responsible for as it relates to elections. Every person sitting up here is elected based upon what the Federal Government does, as is the President of the United States, as is the Senate of the United States as well.

We have the responsibility to ensure election security and integrity in any election. We also, especially as you talk about now and you hear on the news all the time about interference from other nations, we have those responsibilities for cybersecurity, for integrity, and for security. As well, the Federal Government has to ensure that protected classes are not treated unfairly, and that is why you have heard questions about how it affects the poor, how it affects people of color, et cetera. So we do have an overall responsibility for elections. So don't think it is solely a State issue. It is not. So I just want to make that clear as we go forward so that the audience is not confused about our responsibility.

Secondly, and I think, to the Senator, I understand clearly what you have been saying to me. I am just curious how many people came to you about the harvesting that it was so important an issue that you needed to take it to make a law?

Ms. UGENTI-RITA. Yes. Thank you, ma'am. Generally speaking, probably maybe a dozen.

Chairwoman FUDGE. And what is the size of the State of Arizona?

Ms. UGENTI-RITA. It is—the population?

Chairwoman FUDGE. Yes.

Ms. UGENTI-RITA. 6.5 million, but there is no correlation between the two, if that is what you are trying to—

Chairwoman FUDGE. Well, no. That is your decision. My thinking is that if 12 people come, and you are going to make a law that affects six-and-a-half million people, I think that that is a problem, but that is just—I am not asking to debate it. That is my opinion.

The other thing that I really do want to address, and I am truly not trying to pick on you, but you just have said some things that concern me. Let me just say to you that mailing a bill is not a right. Voting is. You cannot compare those two things, because voting is a right given to us by the Constitution—I am not asking you a question—by the Constitution of the United States. And I can promise you that if my neighbor wanted me to mail their bill, I could, but I can't take their ballot. You cannot compare those two things.

Because what I know is there was a time in this Nation where being a good neighbor meant something. We helped elderly people. We helped sick people. We helped the people who were disabled. We helped people. Now what we have done is say, I can't help you if you have a problem. That is—and I don't see that harvesting has been a major problem anywhere other than in North Carolina. It is the only place that I am aware of that it ever has been a problem. So we continue to find solutions for problems that don't exist.

So with that, I am going to ask my questions and then close. The question I asked, if you remember, what is the one thing you would have us take away from this hearing or the one thing you would have us do when we get back? We will start with you, Ms. Bohnee.

Ms. FERGUSON-BOHNEE. Thank you, Madam Chair. I believe that we need a framework in place to analyze voting laws as to whether or not they have a discriminatory impact on Native American communities. And if that is updating the preclearance formula, then that is what I think would benefit Indian Country in Arizona.

Chairwoman FUDGE. Thank you.

We will just go right down the line.

Ms. VAN ASSCHE. I think it has been very clear that our Native American community has suffered as a result of many of the challenges we have talked about, and so I would encourage the Subcommittee to continue dialogue to ensure that the Native American community has its unique issues addressed.

Ms. ARREDONDO. I would encourage the Committee to continue to promote and push for the signature of—the thing that we have with us all the time, our signature, to be the number one way that we prove who we are when it comes to voting, not just for our Native American community, but also for our really young people who

don't have a driver's license yet, have not gotten an ID, and we learned that just this last week with National Voter Registration Day.

Mr. GULOTTA. I would add along the same vein that I think that what we have been talking about today doesn't just impact our Native American partners and community members, but it impacts our African American community members and our Latino community members. And what we need, if anything else, is a coverage formula that still includes Arizona, because what you have heard today is that we have a serious problem here.

Mr. HILL. There are over 6 million Americans who cannot vote today walking around our great Nation free, who have jobs, who are members of society, who cannot vote because of a felony conviction. We need to place greater pressure on States to reform their felon disenfranchisement laws and make it a point that every person who walks freely who is a citizen of this great country can vote in every election.

Ms. UGENTI-RITA. Thank you. I hope the takeaway is that there is overwhelming support for the ban of this deceptive practice and to stop meddling in the State of Arizona and support our laws.

Chairwoman FUDGE. Which practice?

Ms. UGENTI-RITA. The ban of prohibiting ballot harvesting. They overwhelmingly support that law.

Chairwoman FUDGE. Thank you.

I thank you all so much for being here. I would just say that no law is perfect. We know it. We do that every day. Every Member up here knows that we pass laws. We make them better when we find out that there is something that needs to be changed. But I would just suggest that when we err, we should err on the side of the citizenry. We should err on the side of the Constitution, and ensure, as the Constitution says, that every single person in this country has the unabridged, unfettered right to vote.

Is it difficult to do it the right way? Yes. But I think that in recent years, we have made it more difficult by making it more difficult on protected classes of people, the poor, people of color, I think—minorities. It has become very, very clear. But I appreciate the fact that all of you are working to try to make the system better. I just hope that we stop being so high and mighty that we realize that everybody is not like we are. Everyone does not have the same benefits we have had.

Those who have been incarcerated, we don't take away their citizenship when we put them in prison, so we should treat them like citizens when they come out, and that means that they should have the right to vote like everyone else in this country.

I thank you all very, very much. We will take your testimony and do the best we can to let our colleagues know what is happening in the State of Arizona.

And with that, this hearing is adjourned. Oh. I can't do that.

I want to thank the staff, both staffs, for the work that they have done. Thank you very much, staff.

I want to thank the United States Capitol Police, who are here to protect us. We thank you all. The Members of the Committee, the Subcommittee on Elections, the Chairperson of the full committee, Zoe Lofgren in her absence, this college, Phoenix College,

for hosting us, and everyone else who has had anything to do with the successful hearing today.

Our staff from the House, from the Clerk's office who is transcribing all of this today, the people who are live-streaming it, everyone, thank you all so much.

Without objection, this hearing is adjourned.

[Whereupon, at 12:20 p.m., the Subcommittee was adjourned.]



LEAGUE OF
WOMEN VOTERS' ARIZONA

1934 E. Camelback Rd. #120, Box 277, Phoenix, AZ 85016

October 1, 2019

**League of Women Voters of Arizona urges passage of Voting Rights Advancement
Act (H.R. 4)**

Honorable Committee members:

Voter rights and voter education have been the signature issues of the League of Women Voters (LWV) since its founding. The League, which will be 100 years old in 2020, grew out of the women's suffrage movement, but we didn't stop there! The League has continued to advocate tirelessly to expand and protect the right to vote for citizens throughout the United States, including here in Arizona. Consistent with our non-partisan mission--"Empowering Voters. Defending Democracy"--and bolstered by a century of engagement and enduring consensus among our members, League of Women Voters Arizona (LWVAZ) strongly urges you to cosponsor and support passage of the Voting Rights Advancement Act (H.R. 4), a bill that would modernize and repair the Voting Rights Act (VRA) of 1965.

The Voting Rights Act of 1965 (VRA) outlawed racial discrimination in voting and established procedures to protect equal access to the vote for every American citizen. But in its 2013 decision *Shelby County v. Holder*, the Supreme Court overturned the key provision of the VRA that triggered careful review of proposed voting changes in historically discriminatory jurisdictions before they could take effect. Since that decision, politicians in states, counties, cities, and towns across the country have passed laws and adopted practices that discriminate against

voters of color and language minorities -- making it more difficult for them to register and to vote.

Passage of the original VRA as well as its reauthorizations in 1970, 1975, 1982, 1992, and 2006 was accomplished with bipartisan support in Congress. In fact, all but one reauthorization of the legislation, was signed into law by a Republican President, who refused the notion that voting is a partisan issue.

LWVAZ urges passage of H.R. 4.

The League of Women Voters supports the Voting Rights Advancement Act as the main vehicle for restoring the preclearance process and modernizing the coverage formula for covered jurisdictions. Legislation from Representative James Sensenbrenner also addresses the modernization of the coverage formula. The League wants to work with you to find common ground on a path toward restoring the Voting Rights Act. We know that you as a dedicated member of Congress, want to protect your constituents, especially those that face discrimination when it comes to their most basic right: the right to vote.

H.R. 4 contains crucial updates and safeguards to voter rights across the country, and specifically in Arizona.

Arizona, having been identified in the VRA as a state with discriminatory voting practices, was subject to advance scrutiny of changes in its voting laws. In the aftermath of Shelby County, our state has attempted in numerous ways to restrict the franchise:

- ❖ Arizona voters are now saddled with a dual registration and ballot system.

After the state passed legislation requiring specific identification as proof of

citizenship, The League and other non profit organizations sued the State **twice**, challenging this identification requirement as a clear violation of federal law. After lengthy and expensive litigation, the United States Supreme Court ruled that voters without the state-prescribed ID can register to vote, but only for federal offices. Thus in Arizona some voters show ID and can then vote for all offices, and others can register and vote only for federal officials. Thus we have a Federal-only Ballot System and a different State Ballot System, with different ID requirements.

- ❖ Arizona was one of the states covered by Section 5 of the VRA and since the Shelby County decision, Arizona has seen many significant and negative changes to our laws and election procedures relating to voting rights. In 2016, the Maricopa County Recorder, whose jurisdiction covers the greater Phoenix area, greatly reduced the number of polling places, resulting in voters waiting in line more than 5 hours. Furthermore, the 2016 decision to reduce the number of polling locations did not take into account the need of voters to use public transit or needing to balance work, school and family obligations. Untold numbers of voters, discouraged by the long lines and wait time, left before they could exercise their right to vote. The most negative impact of these decisions were on Communities with limited financial resources and communities of color and language bore the brunt of these practices. The League considers this to be an insidious voter suppression tactic.
- ❖ LWVAZ, in collaboration with many non profits, has lobbied against proposed bills brought forward by the Arizona Legislature, that would negatively impact full participation of all eligible voters. The results have been mixed, and constant vigilance has been required. For example:

- LWVAZ participated in significantly amending a bill proposed to make it a crime for anyone who registered voters to receive anything of value for doing that work. That would have meant that if League sponsored a voter registration drive and we provided coffee and donuts to our members, they would have been charged with a felony. The bill as passed only prohibited payment to those registering voters based on the number of voter registration forms completed.
- Arizona's permanent vote by mail process (Permanent Early Voter List or PEVL) is used by over 70% of voters. LWVAZ helped defeat a bill that would have removed voters from PEVL if they did not use this PEVL for two consecutive primary or general elections. Had the bill passed, it was estimated that over 200,000 voters would have been negatively affected.
- LWVAZ was unable to defeat a bill that requires anyone using emergency voting procedures must submit a sworn statement describing the emergency that kept them from voting on election day. This bill was a fairly direct reaction to the fact that for the 2018 election, the Maricopa County Recorder established emergency voting centers that allowed voters from anywhere in the county to use one of these facilities to vote during the weekend prior to Election Day. LWVAZ takes the position that Emergency Voting centers greatly expand the opportunity for working families, people of color, and communities and families with limited financial resources to participate fully in the elections. Sworn affidavits are an impediment to their use.
- This past legislative session, LWVAZ stood ready to support a series of bills known as the Voters' Bill of Rights, which included legislation for automatic

107

105

voter registration, same day registration, acceptance of Tribal ID's , university and college student id's and restoration of voting rights for previously incarcerated individuals. NONE of these bills were even assigned to any committees. They died without any hearings or opportunities for those who understand the need for such legislation to voice their support and lend their expertise.

These restrictive efforts have been persistent and are likely to continue, unless federal safeguards are reinstated.

The League looks forward to working with you and other stakeholders to ensure protection of voter rights. In years past, this has been an objective that cut across party lines.

Denying citizens their right to vote through discriminatory practices should be unacceptable in the greatest democracy in the world. The League of Women Voters urges you to support legislation like the Voting Rights Advancement Act to restore the protections of the VRA. We look forward to working with you directly to address any concerns you have and find common ground as we move this historical legislation forward and restore the rights and protections of voters across the country. Our nation will be stronger for it.

Thank you

On behalf of the LWVAZ Board and State President Katie Murphy-Darling,

Pinny Sheoran, Chair of LWVAZ State Advocacy Committee

Contact:

Voting Rights in Arizona



An Advisory Memorandum of the
Arizona Advisory Committee to the
U.S. Commission on Civil Rights

July 2018

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

*Letter of Transmittal***Arizona Advisory Committee to the
U.S. Commission on Civil Rights**

The Arizona Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this advisory memorandum regarding potential barriers to voting in the state of Arizona that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin. The Committee submits this advisory memorandum as part of its responsibility to study and report on voting rights concerns and to supplement the U.S. Commission on Civil Rights' 2018 statutory enforcement report. The contents of this advisory memorandum are based on testimony received during a public meeting on March 9, 2018 held in Phoenix, testimony submitted to the Committee in writing, and testimony received during the January 11, 2018 meeting of the Native American Voting Rights Coalition.

This advisory memorandum begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from testimony, and recommendations for addressing related civil rights concerns directed to federal and state enforcement agencies, and various state-level stakeholders. In recognition of the U.S. Commission on Civil Rights' continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers these findings and recommendations for addressing voting rights issues in Arizona.

**Arizona Advisory Committee to the
U.S. Commission on Civil Rights**

Lorena Van Assche, *Chair, Arizona Advisory Committee*, Scottsdale

Rebekah Browder, Gilbert

Aaron Martin, Phoenix

Patty Ferguson-Bohnee, Sacaton

Evangeline Nunez, Phoenix

Ann Hart, Phoenix

Theresa Rassas, Phoenix

Melissa Ho, Phoenix

Jonathan Rose, Tempe

Dana Kennedy, Phoenix

Beverly Walker, Phoenix

David Kim, Gilbert

Eric Yordy, Flagstaff

Adolfo Maldonado, Tempe

Advisory Memorandum

To: The U.S. Commission on Civil Rights
From: The Arizona Advisory Committee to the U.S. Commission on Civil Rights
Date: June 15, 2018
Subject: Voting Rights in Arizona

On March 9, 2018, the Arizona Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony regarding voting rights in Arizona. The following advisory memorandum results from testimony provided during the March 9, 2018 meeting of the Committee, testimony submitted to the Committee in writing, and testimony received during the January 11, 2018 meeting of the Native American Voting Rights Coalition. It begins with a brief background of issues to be considered by the Committee, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns.

This memo is intended to focus specifically on i) potential barriers to voting in the areas of language access, bifurcated voter registration system, voter ID law, and restriction on mail-in ballots; and ii) the impact of the *Shelby County v. Holder* decision, specifically regarding access to polling locations. This memo and the recommendations included within it were adopted by a majority of the Committee on June 15, 2018.

Background

Arizona has a recorded history of challenges with guaranteeing the rights of their citizens to vote. In its early days, Arizona prohibited Native Americans from voting due to their residency and ward status,¹ disenfranchised voters from the polls by requiring literacy tests,² and failed to print election materials in languages other than English even as the State's Spanish-speaking population grew.³ In the last two decades, Arizona continues to face scrutiny over access to polling locations, language access, voter ID law, dual voter registration, and a restriction on mail-in ballots that may have had a disparate impact on voters in protected classes.

¹ Patty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, 47 ARIZ. ST. L.J. 1099, 1108 (Winter 2015).

² James T. Tucker, Rodolfo Espino, Tara Brite, Shannon Conley, Ben Horowitz, Zak Walter, and Shon Zelman, *Voting Rights in Arizona: 1982–2006*, 17:2 S. Cal. Rev. L. & Soc. Just., 283 (Spring 2008).

³ *Continuing Need for Section 203's Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 496–97 (2006) (testimony of Alfred Yazzie, Navajo Language Consultant, Department of Justice) <http://electionlawblog.org/archives/yazzie.pdf>.

Access to Polling Locations

On June 25, 2013, the U.S. Supreme Court ruled in *Shelby County v. Holder* that the formula used to determine which states should be subjected to “preclearance” requirements under the Voting Rights Act of 1965 (VRA) was outdated and thus unconstitutional.⁴ This ruling effectively nullified the preclearance requirement, a core component of the VRA, until Congress agrees on a new formula. States across the country responded to this ruling swiftly and transformed voting and registration processes.

As of March 2016, state legislatures have engaged in substantial activity regarding legislation that affects voting, some of which restrict access to voting and others that expand access to voting. In Arizona, almost every county reduced the number of polling locations. This resulted in 212 fewer polling locations statewide before the 2016 election.⁵ For example, Pima County, the state’s second-largest county, reported 62 fewer locations. Receiving national attention, Maricopa County made headlines with reports of frustrated voters who waited for as long as five hours to cast their ballots during the March presidential preference election.⁶ At this time, there were 60 polling locations which meant there was roughly one polling location for every 21,000 voters.⁷ 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 election⁸ and 70 percent compared to the 2012 presidential preference election.⁹

⁴ See *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013); See also John Schwartz, “Between the Lines of the Voting Rights Act Opinion,” *New York Times*, Jun. 25, 2013, http://www.nytimes.com/interactive/2013/06/25/us/annotated-supreme-court-decision-on-voting-rights-act.html?_r=2&_

⁵ Scott Simpson, “The Great Poll Closure,” *The Leadership Conference Education Fund*, 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

⁶ “Our View: A five-hour wait to vote in Arizona primary? That’s shameful,” *The Republic*, Mar. 23, 2016, <http://www.azcentral.com/story/opinion/2016/03/23/arizona-primary-our-view-we-outraged-long-lines/82152636/>.

⁷ Anne Ryman, Rob O’Dell, and Ricardo Cano, “Arizona primary: Maricopa County had one polling site for every 21,000 voters,” *The Republic*, Mar. 22, 2016, <http://www.azcentral.com/story/news/politics/elections/2016/03/22/live-arizona-primary-coverage-presidential-preference-election/82096726/>; “Past Polling Place Detail Report for 2016 Presidential Preference Election,” *Maricopa County Recorder Website*,

<https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+3%2f22%2f2016&ElectNo=1290&Type=C>.

⁸ “Past Polling Place Detail Report for 2008 Presidential Preference Election,” *Maricopa County Recorder Website*, <https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+3%2f22%2f2008&ElectNo=1290&Type=C>.

⁹ Greg Stanton to Attorney General Loretta Lynch, Mar. 23, 2016, “Request of U.S. Department of Justice Investigation into Disparate Distribution of Polling Locations in Maricopa County,” *City of Phoenix, Office of the Mayor*, http://content.12news.com/document_dev/2016/03/23/mayor-greg-stanton-letter-to-doj_1141486_ver1.0.pdf; “Past Polling Place Detail Report for 2012 Presidential Preference Election,” *Maricopa County Recorder Website*, <https://recorder.maricopa.gov/pollingplace/pastppdetailresults.aspx?view=PPE&election=PRESIDENTIAL+PREFERENCE+ELECTION%2c+2%2f28%2f2012&ElectNo=1206&Type=C>.

Language Access

Language access is required by Section 203 of the VRA, which mandates that the State's election standards, practices, and procedures for limited English proficient voters are equal those for English-speaking voters.¹⁰ Since 2006, the VRA has required the U.S. Census Bureau director to determine which state and political divisions are subject to the minority language assistance provision of Section 203.¹¹ There are two criteria under Section 203's coverage formula that must be satisfied for the provision to apply in a state or jurisdiction. First, the limited English proficient citizens of voting age in a single protected language group must: (1) number more than 10,000; (2) comprise more than five percent of all citizens of voting age; or (3) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation.¹² Second, the illiteracy rate of the citizens of the limited-English proficient group must exceed the national illiteracy rate.¹³ If these criteria are not met, jurisdictions are not required to comply with this Section 203 of the VRA.

Language assistance is imperative in Arizona, as 31 percent of Arizona's population is Hispanic¹⁴ and five percent are Native American.¹⁵ As of 2016, 12 of Arizona's 15 counties must comply¹⁶ with Section 203 by providing translated election material in Spanish or Native American languages.

Voter ID and Bifurcated Voter Registration

Arguably to prevent voter fraud, 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.¹⁷ 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.¹⁸ 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.¹⁹ 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-

¹⁰ 52 U.S.C. § 10301.

¹¹ Pub. L. 109-246, 120 Stat. 577 (2006).

¹² 52 U.S.C. §§ 10503(b)(2)(A)(i).

¹³ 52 U.S.C. §§ 10503(b)(2)(A)(ii).

¹⁴ U.S. Census Bureau, "Fact Finder: Arizona (2016),"

<https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

¹⁵ U.S. Census Bureau, "Quick Facts: Arizona," <https://www.census.gov/quickfacts/AZ>.

¹⁶ See Appendix A.

¹⁷ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 6 (2013) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 2 (2006) (per curiam)) (Proposition 200 was designed in part "to combat voter fraud by requiring voters to present proof of citizenship when they register to vote and to present identification when they vote on election day.").

¹⁸ Ariz. Rev. Stat. § 16-579.

¹⁹ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 15 (2013).

approved citizenship requirements.²⁰

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.²¹ 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*.²² 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."²³ The Supreme Court stayed the Ninth Circuit's opinion, and the law remained in effect for the 2016 general election.²⁴

On May 10, 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.²⁵ 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 voters in Arizona to conclude that the law did not have a sufficiently negative impact on voters statewide to raise sufficient concerns.²⁶ Plaintiffs immediately appealed.

Testimony received, and the finding outlined below in reference to ballot harvesting was developed prior to the issuance of the May 10, 2018 Order.

Findings

The section below provides findings received and reflects views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

²⁰ *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 6 (2013).

²¹ H.B. 2023, 52nd Leg., 2nd Sess. (Ariz. 2016).

²² *Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366 (9th Cir. 2016) (*en banc*).

²³ *Id.* at 369.

²⁴ *Arizona Sec'y of State's Office v. Feldman*, 137 S. Ct. 446, 196 L. Ed. 2d 326 (2016).

²⁵ See Amended Findings of Fact and Conclusions of Law, *Democratic National Committee v. Reagan, et al.*, No. CV-16-01065-PHX-DLR, ECF No. 416, (D. Ariz. May 10, 2018).

²⁶ *Id.* at 21-31.

Findings regarding access to polling locations:

1. 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;²⁷ 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.²⁸
2. To remedy the closure of polling locations, counties have the discretion to implement a vote center model upon approval of a board of supervisors.²⁹ Vote centers provide voters the opportunity to vote at a location of their choice, instead of a mandatory polling location, and may decrease the likelihood of voters being turned away for appearing at the wrong polling location.³⁰ Both Coconino County and Cochise County use this model.³¹
3. County Recorders expressed frustration over the lack of Help America Vote Act funding to support election administration efforts. For example, as voting machines near its end of life, counties have used their own funding to pay for new voting machines.³²
4. Members of the disability community expressed the following concerns regarding access to the polls:
 - a. poll workers lacked knowledge on how to operate accessible voting machines³³ and machines were not turned on;³⁴
 - b. voting machines did not have the option to change or view access options;
 - c. polling locations were inaccessible as many lacked wheelchair ramps or elevators, sufficient reserved accessible parking spaces and;
 - d. on one occasion, a poll worker threatened to call the police because a voter appeared at the wrong polling location.³⁵

²⁷ Patty Hansen, testimony, *Briefing Before the Arizona Advisory Committee to the U.S. Commission on Civil Rights, Phoenix, AZ*, March 9, 2018, transcript, p. 27 (hereafter cited as *Phoenix Briefing*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>.

²⁸ Spencer Testimony, *Phoenix Briefing*, p. 14.

²⁹ *Ibid.*, pp. 18-19.

³⁰ Marra Testimony, *Phoenix Briefing*, p. 42.

³¹ *Ibid.*, Hansen Testimony, *Phoenix Briefing*, p. 27.

³² Marra Testimony, *Phoenix Briefing*, p. 44 (noting that Cochise County purchased voting equipment).

³³ Huereña Testimony, *Phoenix Briefing*, p. 183.

³⁴ *Ibid.*, pp. 182-183.

³⁵ Britton Testimony, *Phoenix Briefing*, p. 184.

5. 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
 - b. Native American voters residing in reservations, some spanning thousands of square miles, have few polling locations available to them.³⁷

Findings regarding language access:

1. 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.³⁹
2. 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.⁴⁰ 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.
3. Election officials have a process and criteria in place when procuring voting equipment. This includes upload features to store audio clips for language access.⁴¹ These features

³⁶ Fowler Testimony, *Phoenix Briefing*, pp. 83-84.

³⁷ Raul Grijalva, 3rd Congressional District, State of Arizona, Public Meeting on Arizona Voting Rights: Briefing Before the Arizona Advisory Committee to the U.S. Commission on Civil Rights, written testimony, p. 2 (2018), (hereafter cited as *Written Testimony*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>; See Appendix E.

³⁸ Brian Curley-Chambers, testimony, Hearing before the Native American Voting Rights Coalition, *Phoenix, AZ*, January 11, 2018, transcript, p. 25 (hereafter cited as *Desert Southwest Voting Rights Hearing*) <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>; See Appendix F.

³⁹ Fontes Testimony, *Phoenix Briefing*, p. 56.

⁴⁰ Hill Testimony, *Phoenix Briefing*, p. 101.

⁴¹ Spencer Testimony, *Phoenix Briefing*, p. 11.

are key to ensuring voters with language access needs are able to fully participate when using voting equipment.

4. The Secretary of State has the following plans to ensure language access:
 - a. Development of a uniform standard for election websites; and
 - b. Further discussion regarding translation services, such as Google Translate, are appropriate to use to translate election websites and for election equipment.⁴²

Findings regarding the State's voter ID requirement and bifurcated voter registration:

1. 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.⁴³ Communities are who are less likely to have the required ID include: (i) out of state college students,⁴⁴ (ii) Native American voters, (iii) minority communities (vi) women,⁴⁵ and (v) overseas military personnel.⁴⁶
2. Based on testimony, the Secretary of State's Office is currently in litigation regarding requirements of the state voter registration form.⁴⁷ 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.⁴⁸
3. 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.⁴⁹ 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.
4. 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.⁵⁰ For example, in Maricopa County, roughly 96,000 voter registration forms were rejected because applicants were required to resubmit physical documentation of citizenship.⁵¹ To remedy incomplete forms, County

⁴² *Ibid.*

⁴³ Hansen Testimony, *Phoenix Briefing*, p. 23.

⁴⁴ *Ibid.*, p. 26.

⁴⁵ Hill Testimony, *Phoenix Briefing*, p. 99.

⁴⁶ *Ibid.*

⁴⁷ See Complaint, *League of United Latin American Citizens Arizona v. Reagan*, No. 2:17-CV-04102-DGC, ECF No. 1, (D. Ariz. Nov. 7, 2017).

⁴⁸ Spencer Testimony, *Phoenix Briefing*, pp. 21-22.

⁴⁹ Parsons Testimony, *Desert Southwest Voting Rights Hearing*, p. 14.

⁵⁰ Hill Testimony, *Written Testimony*, p. 2.

⁵¹ Fontes Testimony, *Phoenix Briefing*, p. 31.

officials used the Arizona Motor Vehicle Division (MVD) database to compare names to confirm proof of citizenship.

5. 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.⁵² This indicates that federal and State government databases do not communicate with each other.
6. The State's paper voter registration form⁵³ is different from the online voter registration form available through ServiceArizona.⁵⁴ 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.⁵⁵
7. 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 2015.⁵⁶ 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.⁵⁸
8. 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.⁵⁹
9. Under state and federal law, a felony conviction triggers cancellation of voter registration.⁶⁰ 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.⁶¹

⁵² Sainz Testimony, *Phoenix Briefing*, p. 171.

⁵³ Service Arizona, "Arizona Voter Registration Form," https://www.azsos.gov/sites/default/files/voter_registration_form.pdf.

⁵⁴ Service Arizona, "Online Voter Registration Form," <https://servicearizona.com/voterRegistration>.

⁵⁵ Lane Testimony, *Desert Southwest Voting Rights Hearing*, p. 89.

⁵⁶ Hill Testimony, *Phoenix Briefing*, p. 98.

⁵⁷ *Ibid*.

⁵⁸ "Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada, and South Dakota," *The Native American Voting Rights Coalition*, January 2018, 4, <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-results.pdf>.

⁵⁹ Titla Testimony, *Desert Southwest Voting Rights Hearing*, p. 248.

⁶⁰ Ariz. Rev. Stat. 13-904(A).

⁶¹ Edman Testimony, *Phoenix Briefing*, p. 89.

Furthermore, Arizona is ranked the 7th highest in the country and has disenfranchised 220,000 adults and 11.89 percent of African Americans.⁶²

10. 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.⁶³
11. 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.⁶⁴
12. There is a lack of information regarding restoration of voting rights for the formerly incarcerated available through court websites.⁶⁵

Findings regarding restriction on mail-in ballots:

1. Advocates argue a ban on ballot collection may impose a disproportionate burden on Native American voters due to their proximity to a mailbox;⁶⁶ and voters who rely on caregivers, friends, family members, or others in their community to collect ballots to take to voting sites.

⁶² Christopher Uggen, Ryan Larson, and Sarah Shannon, "6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement," *The Sentencing Project*, <http://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/#II.%20Disenfranchisement%20in%202016>; Edman Testimony, *Phoenix Briefing*, p. 89.

⁶³ Jackson Testimony, *Phoenix Briefing*, p. 185.

⁶⁴ Hill Testimony, *Phoenix Briefing*, pp. 102-103.

⁶⁵ *Ibid.*, p. 107.

⁶⁶ Gonski Testimony, *Phoenix Briefing*, p. 139.

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁶⁷ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Arizona Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to U.S. Department of Justice to:
 - a. Enforce the Voting Rights Act in Arizona.
 - b. Appropriate the nearly \$320 million dollars already allocated to counties to election assistance to improve voter outreach and education.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Arizona State Legislature to:
 - a. Provide appropriations from the Help America Vote Act fund to support language assistance efforts, voter registration efforts, and upgrade voting machines and ballot counting readers in Arizona.
 - b. Eliminate the requirement that felons pay fines and fees in order to restore their voting rights.
 - c. Institute mandatory training of all judges, court staff, law enforcement, prosecutors and public defenders on the use of the bench card.⁶⁸
 - d. Ensure information regarding the restoration of voting rights is available on court and election websites.
 - e. Consider implementing same day voter registration to encourage voter turnout.

⁶⁷ 45 C.F.R. § 703.2 (a)-(c).

⁶⁸ National Task Force on Fines, Fees and Bail Practices, *Lawful Collection of Legal Financial obligations: A Bench Card for Judges*, 2017, http://www.ncsc.org/~media/Images/Topics/Fines%20Fees/BenchCard_FINAL_Feb2_2017.ashx (noting the bench card contains a clear set of instructions for state judges to use when determining whether a person has the means to pay fines and fees. In addition, it provides simple and clear rules about notifying defendants about their rights (including the right not to be jailed for being poor), how they must be allowed to explain their financial situation, and a definition of poverty).

- f. Change the state voter registration form to include room to depict and describe in writing a non-traditional, rural or remote address that is not recognized by the U.S. Postal Service.
- 3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Arizona State Bar, Arizona Supreme Court, Arizona Federal Court, Arizona Superior Courts and respective probation offices to:
 - a. Encourage members of the judiciary to be knowledgeable in voting rights for those with one and multiple felonies.
 - b. Encourage members of the judiciary to advise those sentenced in their courtroom of future voting eligibility, including reminder of automatic voting rights restoration upon completion of sentence, including prison, parole and probation.
 - c. Encourage probation offices and their officers to be knowledgeable in voting rights for those with one and multiple felonies.
 - d. Encourage probation offices and their officers to advise their clients of future voting eligibility, including reminder of automatic voting rights restoration upon completion of sentence, including prison, parole and probation.
- 4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Arizona Secretary of State and Elections Director to:
 - a. Provide appropriations from the Help America Vote Act fund to support language assistance efforts, voter registration efforts, and upgrade voting machines and ballot counting readers in Arizona.
 - b. Comply with the Americans with Disabilities Act to ensure that polling locations are accessible by voters with disabilities.
 - c. Comply with the National Voter Registration Act by requiring Section 5 and Section 7 servicing agencies to consistently ask individuals to register to vote. In addition, require that Section 5 and Section 7 agencies perform voter registration functions in accordance with Section 203 jurisdictions to obtain uniformity and efficiency in Arizona's voting process.
 - d. Provide election materials to voters with visual disabilities such as providing braille and large print ballots at polling locations.
 - e. Strengthen voter education efforts, especially on how to properly fill out registration forms.

- f. Consider changing the current voter registration form to avoid the need for a bifurcated voter registration system.
 - g. Strongly encourage the use of federal and state government databases that house citizenship information to avoid rejecting registration applications.
 - h. Solicit input from diverse communities prior to purchasing election equipment to ensure unique needs are addressed.
 - i. Ensure information regarding the restoration of voting rights is available on court and election websites and shared through voter registration efforts.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Arizona County Recorders to:
- a. Ensure poll workers are trained to provide service to voters with disabilities. This includes training on how to operate accessible machines and training on “people-first” language.⁶⁹
 - b. Allow poll workers the opportunity to work in split shifts to address scheduling concerns.
 - c. Maintain relationships with community leaders to address language access needs, especially among jurisdictions that recently lost Section 203 coverage.
 - d. Consult with organizations such as Arizona Commission for the Deaf and Hard of Hearing to improve county election websites.

⁶⁹ Center for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, *Communication With and About People with Disabilities*, https://www.cdc.gov/ncbddd/disabilityandhealth/pdf/disabilityposter_photos.pdf.

Appendix

- A. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203
- B. *Democratic National Committee v. Reagan, et al.*, Amended Findings of Fact and Conclusions of Law
- C. Briefing Agenda & Minutes
- D. Briefing Transcript
- E. Written Testimony
 - a. Darrell Hill, Attorney, ACLU of Arizona
 - b. Raul Grijalva, 3rd Congressional District, State of Arizona
- F. Desert Southwest Voting Rights Hearing Transcript

Appendix A

<https://www.federalregister.gov/documents/2016/12/05/2016-28969/voting-rights-act-amendments-of-2006-determinations-under-section-203>

Appendix B

Democratic National Committee v. Reagan, et al., Amended Findings of Fact and Conclusions of Law

<https://bit.ly/AZ-ballotharvesting>

Appendix C

Briefing Agenda and Minutes

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix D

Briefing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix E

Written Testimony

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

Appendix F

Desert Southwest Voting Rights Hearing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155514&cid=235>

**Arizona Advisory Committee to the
United States Commission on Civil Rights**



U.S. Commission on Civil Rights Contact

USCCR Contact Regional Programs Coordination Unit
U.S. Commission on Civil Rights
300 North Los Angeles Street, Suite 2010
Los Angeles, CA 90012
(213) 894-3437

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THE HISTORY OF INDIAN VOTING RIGHTS IN ARIZONA: Overcoming Decades of Voter Suppression

Patty Ferguson-Bohnee*

I. INTRODUCTION

In 2006, Navajo elder Agnes Laughter attempted to vote as she had for over thirty years. Not only was she turned away from the polls, she was berated for not having identification (“ID”) as required by Arizona’s new voter ID law. Ms. Laughter was discouraged and distraught. She did not have a photo ID nor did she have any documents to satisfy Arizona’s new voter ID law. She attempted several times to obtain a state ID from the Arizona Department of Transportation, but she was denied because she was born in a hogan and lacked an Arizona birth certificate. While Arizona law allows voters to present two forms of nonphoto ID, Ms. Laughter also lacked documents to satisfy the alternative—she did not drive, she did not own a vehicle, her home lacked electricity, and since she lives on the Navajo Reservation, she did not owe property taxes. Arizona’s new ID law did not make exceptions for voters like Ms. Laughter.

Ms. Laughter’s experience is just one example of the voter obstacles faced by Native American¹ voters in Arizona. Native Americans “have experienced a long history of disenfranchisement as a matter of law and of practice.”² This

* Clinical Professor of Law at the Sandra Day O’Connor College of Law; Director of the Indian Legal Clinic; Faculty Director of the Indian Legal Program; and Of-Counsel at Sacks Tierney P.A. Many thanks to Judith Dworkin at Sacks Tierney for introducing me to voting rights work for giving me the opportunity to work on important Indian voting cases in Arizona, to Marvin Cohen for his guidance and support on these issues, and to Nikki Borchardt Campbell for her research assistance. Some portions of this article reproduce topics addressed in casework and amicus briefs written by the author. See Brief for the Navajo Nation et al. as Amici Curiae Supporting Respondents & Respondent-Intervenors, *Shelby Cty. v. Holder*, 133 S. Ct. 2612 (2013) (No. 12-96), 2013 WL 432965; Brief for the Navajo Nation et al. as Amici Curiae Supporting Appellees, *Northwest Austin Municipal Utility Dist. No. 1 v. Holder*, 557 U.S. 193 (2009) (No. 08-322), 2009 WL 1615360.

1. Native American, Indian, and American Indian are used interchangeably throughout this article.

2. *Continuing Need for Section 203’s Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 309 (2006) (letter from Joe Garcia, Nat’l Cong. of Am. Indians).

comes from a complicated and contradictory history of laws and policy that has recognized tribes as separate sovereigns, reduced tribal status to that of domestic dependent nations, sought to remove, relocate, or assimilate tribal citizens, terminated numerous indigenous nations, and has now moved to a policy of tribal self-government. Unfortunately, the right to vote for Arizona's first people has only recently been achieved, and there are continuing threats to the electoral franchise. In my work as a voting rights attorney, I have viewed firsthand the threats to Native American voting rights and the need for vigilant protection of the right to vote.

Voter suppression has been used to discourage or prevent Indian people from voting in Arizona. Voter qualifications such as literacy tests were used to prevent Indians from participating in elections for approximately fifty years.³ Once Native Americans started voting, redistricting and vote dilution were used to reduce the effectiveness of the Native vote.⁴

This article will review the history of Indian voting rights in Arizona. I begin by reviewing the history of Native American voting rights and the history of voting discrimination against Native Americans in Arizona. The Voting Rights Act turned the corner for Native people to participate in the state and federal election processes. I will then discuss the current challenges faced by Native American voters and specifically discuss the voter ID law passed in 2004. The voter ID law is a roadblock that impedes full participation by all Arizona Indians. The last part of the article focuses on strategies to protect Indian voting rights. Notwithstanding the Supreme Court's invalidation of the Section 5 coverage formula in *Shelby County*,⁵ tribes should consider proactive measures to ensure that tribal citizens can participate in elections.

II. HISTORY

This section reviews the history of Indians as citizens, the impact of citizenship on suffrage rights for reservation Indians in Arizona, and the obstacles to the ballot box once the right to vote was recognized.

3. *Id.* The Indian Citizenship Act was passed in 1924, but Arizona Indians were unable to exercise the right to vote until approximately fifty years later.

4. *Id.*

5. *Shelby County v. Holder*, 133 S. Ct. 2612, 2631 (2013) (invalidating the coverage formula for Section 5 preclearance).

A. Native Americans as Citizens

Although Native Americans are the first Americans,⁶ tribes are separate sovereigns and therefore Indians are citizens of their respective nations, and were not citizens of the United States.⁷ The United States Constitution recognized this sovereignty and considered tribes to be extrajurisdictional.⁸ In 1831, the United States Supreme Court distinguished tribal nations from foreign sovereigns and deemed them to be domestic dependent nations.⁹ As domestic dependent nations, it was clear that tribes still occupied a separate status. In an 1856 Opinion, Attorney General Caleb Cushing explained why domestic subjects cannot be made citizens absent a treaty or specific act of Congress.¹⁰

The simple truth is plain, that the Indians are the *subjects* of the United States, and therefore are not, in mere right of home-birth, citizens of the United States. The two conditions are incompatible. The moment it comes to be seen that the Indians are domestic subjects of this Government, that moment it is clear to the perception that they are not the sovereign constituent ingredients of the Government.¹¹

Cushing further explained that the general statutes of naturalization do not apply to Indians because “Indians are not foreigners,” subject to another’s allegiance since they are in “our allegiance, without being citizens of the United States.”¹²

6. The earliest use of the term “American” referred to the native inhabitants of the New World. The 1828 Edition of Webster’s Dictionary defines American as “[a] native of America; originally applied to the aboriginals, or copper-colored races, found here by the Europeans.” 1 NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828). The Oxford English Dictionary defines American as “[a]n indigenous inhabitant of (any part of) the Americas; an American Indian.” J. A. SIMPSON & E. S. C. WEINER, THE OXFORD ENGLISH DICTIONARY (2d ed. 1989).

7. Tribal sovereignty has been recognized through treaties, the U.S. Constitution, American common law, and international law. See Robert Odawi Porter, *The Inapplicability of American Law to the Indian Nations*, 89 IOWA L. REV. 1595, 1600–04 (2004).

8. Article I, Section 2 of the Constitution excludes “Indians not taxed from apportionment.” U.S. CONST. art. I, § 2. Article I, Section 8, gives Congress the power to “regulate commerce with foreign nations . . . and with the Indian tribes.” U.S. CONST. art. I, § 8.

9. *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831).

10. *Relation of Indians to Citizenship*, 7 Op. Att’y Gen. 746, 749–50 (1856).

11. *Id.* at 749.

12. *Id.*

Prior to the end of the Civil War, voting was primarily restricted to white males.¹³ With the end of the Civil War in 1865, Congress passed a series of laws and constitutional amendments to extend the rights and privileges of citizenship to emancipated slaves, including the right to vote.¹⁴

The Reconstruction Amendments and implementing legislation excluded Indians because as members of tribal nations, Indians were not American citizens, and therefore, not eligible to vote in elections.¹⁵ Section 1 of the Fourteenth Amendment establishes that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”¹⁶ One might assume that this language bestows citizenship on Indians.¹⁷ Senators engaged in a robust debate about whether Section 1 of the Fourteenth Amendment should be more explicit in excluding Indians.¹⁸ In some areas of the country, including Arizona, Indian citizenship would change the power structure.¹⁹ However, as Attorney General Cushing noted in 1856, because Native Americans were “subjects of” the United States and not “subject to” United States jurisdiction, it was not necessary to clarify that Indians were not made citizens pursuant to the Fourteenth Amendment.²⁰ The Senate believed that excluding the phrase “Indians not taxed” from Section 1 did not affect the status of Indians, and the phrase was specifically included in Section 2.²¹ Section 2 of the

13. See DANIEL MCCOOL ET AL., *NATIVE VOTE: AMERICAN INDIANS, THE VOTING RIGHTS ACT, AND THE RIGHT TO VOTE* ix (2007). For a discussion of white male suffrage, see DANIEL HAYES LOWENSTEIN ET AL., *ELECTION LAW* 28–30 (4th ed. 2008). The Constitution does not explicitly guarantee the franchise. See *Minor v. Happersett*, 88 U.S. 162, 177–78 (1875) (overturned by U.S. CONST. amend XIX). “Although the Constitution was promulgated in the name of ‘We, the people of the United States,’ the individual states retained the power to define just who ‘the people’ were.” ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 24 (2000). Therefore, the states decided who could vote. As Keyssar explains, citizenship did not equal voting rights. *Id.*

14. The Reconstruction Amendments sought to end slavery and provide the right to vote to former male slaves. U.S. CONST. amend. XIII (abolishing slavery); U.S. CONST. amend. XIV (extending citizenship to former slaves); U.S. CONST. amend. XV (banning race-based voter qualifications).

15. See MCCOOL ET AL., *supra* note 13, at 1–9.

16. U.S. CONST. amend. XIV, § 1.

17. See N. D. Houghton, *The Legal Status of Indian Suffrage in the United States*, 19 CALIF. L. REV. 507, 510 (1931).

18. See MCCOOL ET AL., *supra* note 13, at 3–5.

19. See, e.g., *id.* at 3. In 1920, Arizona had the second highest population of Indians in the United States. *Original Americans First Vote*, LITERARY DIGEST, Sept. 22, 1928, at 17. (“[p]ractically solid voting by Indians [in Arizona] would be influential in determining the outcome”).

20. *Relation of Indians to Citizenship*, 7 Op. Att’y Gen. 746, 749 (1856).

21. See MCCOOL ET AL., *supra* note 13, at 4–5.

Fourteenth Amendment excludes "Indians not taxed" in congressional apportionment.²² Similarly, the Civil Rights Act of 1866 specifically excluded Indians as citizens.²³ The Civil Rights Act provides that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."²⁴ Tribal citizens are subjects of the United States, but were not subject to the jurisdiction of the United States, and therefore, not citizens.²⁵

Notwithstanding the exclusions, several Indians unsuccessfully attempted to become citizens.²⁶ The Supreme Court confirmed that Indians could not become citizens through naturalization or birth.²⁷ A positive reading of the Court's interpretation is that tribes have maintained their separate political status and have been continuously treated as sovereigns throughout United States history.

It was not until Congress passed the Indian Citizenship Act of 1924 that all Indians were declared United States citizens.²⁸ Prior to 1924, Indians were denied citizenship and the right to vote based on the underlying trust relationship between the federal government and the tribes and their status as tribal citizens. Indians could only become citizens through naturalization "by or under some treaty or statute."²⁹ The 1924 Indian Citizenship Act ended the

22. "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." U.S. CONST. amend. XIV, § 2.

23. *Elk v. Wilkins*, 112 U.S. 94, 103-04 (1884).

24. Civil Rights Act of 1866, 14 Stat. 27 (1866).

25. *Relation of Indians to Citizenship*, 7 Op. Att'y Gen. 746, 749 (1856).

26. *Elk*, 112 U.S. at 103-04 (tribal member who renounces tribal citizenship cannot become citizen of the United States through the citizenship clause of the Fourteenth Amendment); *McKay v. Campbell*, 16 F. Cas. 161, 166 (D. Oregon 1871) (holding that Indians are not subject to the jurisdiction of the United States and that tribes "have always been held to be distinct independent political communities, retaining the right of self-government, though subject to the protecting power of the United States.").

27. *Elk*, 112 U.S. at 103-04.

28. Pub. L. No. 68-175, 43 Stat. 253 (1924) (codified as amended at 8 U.S.C. § 1401(b)). The Act provided that "all non citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property." *Id.* Following World War I, Congress declared that all Indians who served in World War I were eligible for citizenship. See Pub. L. No. 66-75, 41 Stat. 350 (1919).

29. *Elk*, 112 U.S. at 103. Shortly after *Elk v. Wilkins*, Congress passed the Act of February 8, 1887, Pub. L. No. 106-462, 24 Stat. 388 (amended by the Act of May 8, 1906, Pub. L. No. 59-149, 34 Stat. 182). The Act of 1887, also referred to as the Dawes Act or the General Allotment Act, provides that "every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians

period in United States history in which obtaining United States citizenship required an Indian to sever tribal ties, renounce tribal citizenship and assimilate into the dominant culture.³⁰

With the passage of the Indian Citizenship Act and by operation of the Fourteenth Amendment, an Indian who is a United States citizen is also a citizen of his or her state of residence.³¹ Notwithstanding the passage of the Indian Citizenship Act, some states, including Arizona, continued to deny Indians the right to vote in state and federal elections through the use of poll taxes, literacy tests, and intimidation.³²

B. Obstacles to the Ballot Box

At the time of Arizona's statehood in 1912,³³ Native Americans comprised a significant portion of the population in certain counties. Based on the 1910 Census, Native Americans were a substantial portion of the population in Pinal County (3,139 out of 9,045), Apache County (6,131 out of 9,196), Navajo County (5,752 out of 11,471) and Coconino County (2,788 out of 8,130).³⁴ Native Americans comprised 14.3% of the total population.³⁵ No doubt, the participation of Native Americans at the polls could have had an impact on elections. However, in 1912, most of Arizona's Native Americans were not citizens.

therein, and has adopted the habits of civilized life, is a citizen of the United States." *Id.* This law was in effect prior to Arizona's statehood.

30. FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 153 (1945).

31. U.S. CONST. amend. XIV, § 1. By 1924, approximately two-thirds of Indians in the United States had become citizens, but since Arizona did not become a state until 1912, it is unclear how many Arizona Indians, if any, had obtained citizenship. *See* COHEN, HANDBOOK OF FEDERAL INDIAN LAW 153; IV KAPPLER'S INDIAN AFFAIRS: LAWS AND TREATIES 1165 (Charles Kappler ed., 1927).

32. *Continuing Need for Section 203's Provision for Limited English Proficient Voters*, *supra* note 2, at 309 (letter from Joe Garcia, Nat'l Cong. of Am. Indians). In *Harrison v. Laveen*, the court notes that the President's Commission on Civil Rights found that Arizona and New Mexico continued to deny Native Americans the right to vote. 196 P.2d 456, 458 (Ariz. 1948) (citing PRESIDENT'S COMM. ON CIVIL RIGHTS, TO SECURE THESE RIGHTS 40 (1947) ("The constitution of New Mexico withholds suffrage from 'Indians not taxed.' In Arizona the state constitution has been interpreted to deny the vote to Indians as being 'persons under guardianship.'")).

33. A Proclamation, 37 Stat. 1728, 1728-29 (1912).

34. U.S. CENSUS BUREAU, SUPPLEMENT FOR ARIZONA: POPULATION, AGRICULTURE, MANUFACTURES, MINES AND QUARRIES 573 tbl.1, 582 tbl.12 (1913), <http://www2.census.gov/prod2/decennial/documents/41033935v1-8ch2.pdf>.

35. *Id.* at 576.

After passage of the Indian Citizenship Act of 1924, Indians should have been afforded the electoral franchise in accordance with the Fourteenth and Fifteenth Amendments if they met the state's voter qualifications.³⁶ Arizona's Attorney General John W. Murphy agreed and recommended that the counties extend precinct boundaries to include Indian reservation residents. Mindful of jurisdictional concerns, the Attorney General suggested that polling places remain located off-reservation until such time as Congress waives exclusive jurisdiction over Indian territory.³⁷

Attorney General Murphy asked each county attorney for his opinion on the following two questions:

(a) As to whether the state has such jurisdiction over an Indian reservation, or any part thereof, as to permit the state to include such reservation or part thereof in a voting precinct.

(b) As to whether residence on an Indian reservation is such a residential disqualification as is contemplated in [state law].³⁸

The responses varied.³⁹ The first question seems to conflate two separate issues—whether the reservation can be part of a voting precinct, which the Attorney General had already decided in the affirmative, versus whether the state has jurisdiction in Indian Country to establish polling precincts on Indian reservations. Recognizing that the state lacks jurisdiction in Indian Country, some county attorneys objected to establishing polling locations on Indian reservations.⁴⁰ The Office of Indian Affairs noted that the state had previously established polling places for non-Indians living on Indian reservations and encouraged the Attorney General to provide polling places

36. Paragraph 2879 of the Arizona Civil Code set forth voter qualifications. These included that the individual be at least 21 years of age, literate, a resident, and not be under guardianship. *Lawrence v. State*, 240 P. 863, 865 (Ariz. 1925). N. D. Houghton notes that Yaqui Indians from Mexico were not made citizens pursuant to the Indian Citizenship Act but that they could become citizens through naturalization or birth. N. D. Houghton, "Wards of the United States"—*Arizona Applications: A Study of the Legal Status of Indians*, 16 U. ARIZ. BULL. 1, 18 (1945).

37. John W. Murphy, Ariz. Attorney Gen., & A.R. Lynch, Assistant Attorney Gen. (June 30, 1924) (on file with the Arizona State Library); *Native Born Indians Enfranchised By New Bill, Says Attorney General Ruling*, ARIZ. REPUBLICAN, July 2, 1924.

38. Letter from John W. Murphy, Ariz. Attorney Gen., to H. H. Baker, Yuma Cty. Attorney (July 25, 1924) (on file with the Arizona State Library).

39. See generally Box 2, Off. Att'y Gen., RG 4, Arizona State Library.

40. *Id.*; Letter from E.P. Patterson, Pinal Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 5, 1924) (on file with the Arizona State Library); Letter from J. Andrew West, Yavapai Deputy Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (July 30, 1924) (on file with the Arizona State Library); Letter from Ross H. Blakely, Mohave Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 2, 1924) (on file with the Arizona State Library).

for reservation Indians.⁴¹ This requires “cooperat[ing] with the Superintendents in charge of Indian Reservations as to the selection, maintenance, and conduct of polling places.” Apache County already had five established polling locations on Indian reservations, some of which had been in existence for thirty years.⁴²

Apache County—the county with the highest proportion of Indian voters and therefore, the greatest potential impact if Indians could vote—appeared to be more accommodating than the rest.⁴³ Apache County attorney Levi Udall thought the answers were relatively simple and did not think the questions were “really serious.”⁴⁴ Mr. Udall cautioned that interpreting state law to find that reservation Indians lack state citizenship would nullify the Indian Citizenship Act.⁴⁵ Only one other county agreed.⁴⁶

Other counties disagreed. A number of county attorneys believed that reservation Indians lacked the requisite qualifications because they did not meet the state residency requirement as inhabitants of a federal reservation and/or lacked the mental competency requirement as wards of the government.⁴⁷ The Maricopa County attorney’s opinion was that “Indians

41. Letter from Charles H. Burke, Indian Affairs Comm’r, to Carl Hayden, U.S. Representative (July 30, 1924) (on file with the Arizona State Library).

42. Letter from Levi S. Udall, Apache Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 13, 1924) (on file with the Arizona State Library); Letter from George Carney to John W. Murphy, Ariz. Attorney Gen. (July 31, 1924) (on file with the Arizona State Library).

43. Letter from Levi S. Udall, Apache Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 13, 1924) (on file with the Arizona State Library).

44. *Id.*

45. *Id.*

46. *Id.*; Letter from Ross H. Blakely, Mohave Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 2, 1924) (on file with the Arizona State Library).

47. Maricopa, Pinal, and Yavapai County attorneys did not think that reservation Indians met Arizona’s residency requirement. Maricopa, Navajo, and Graham County attorneys thought that the federal guardianship relationship disqualified reservation Indians under the guardianship requirement. Letter from Ross H. Blakely, Mohave Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 2, 1924) (on file with the Arizona State Library); Letter from Chas Cason, Jr., Maricopa Cty. Deputy Attorney, to W.H. Linville, Maricopa Cty. Recorder (May 24, 1928) (on file with the Arizona State Library); Letter from E.P. Patterson, Pinal Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 5, 1924) (on file with the Arizona State Library); Letter from J. Andrew West, Yavapai Deputy Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (July 30, 1924) (on file with the Arizona State Library); Letter from Thorwald Larson, Navajo Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 6, 1924) (on file with the Arizona State Library); Letter from E.L. Spriggo, Graham Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 5, 1924) (on file with the Arizona State Library).

residing on reservations are not entitled to vote at state elections.”⁴⁸ The Pinal County attorney advised the recorder to reject voter registration of Indians.⁴⁹

The issue was not settled, and questions of voter qualifications continued to be an issue for reservation Indians. Governor Hunt, concerned about a potential challenger in his 1928 reelection campaign, sought an opinion to limit Indian suffrage.⁵⁰ The Governor was advised by both the Attorney General and the state’s first civil code commissioner that Indians could not be discriminated against without violating federal law.⁵¹ He was further advised that the “guardianship” provision of the Arizona code could not apply to the guardian-ward relationship existing between the federal government and Indian Tribes.

In the first place, the act of the Arizona legislature was long before the bestowal of citizenship upon the Indians, and its meaning is to be determined and the legislative purpose in using the expression it did, by conditions as they then existed, and at that time the language of the statute obviously referred to ordinary guardianship which, as applied to adults means those person who are under guardianship in the sense of a court having jurisdiction having appointed a guardian of the person or property of such a citizen on account of incompetency or inability to manage his own affairs, or any of the other grounds provided in the statutes relating to that subject.⁵²

The Governor was particularly concerned that the Republican Party would try to register approximately 1,500 Navajos.⁵³ Since there seemed to be no

48. Letter from Chas Cason, Jr., Maricopa Cty Deputy Attorney, to W.H. Linville, Maricopa Cty. Recorder (May 24, 1928) (on file with the Arizona State Library).

49. Letter from E.P. Patterson, Pinal Cty. Attorney, to John W. Murphy, Ariz. Attorney Gen. (Aug. 5, 1924) (on file with the Arizona State Library) (“Anticipating an opinion from your office on this subject, I have advised the recorder to hold the registrations and not place them on the great register.”).

50. Letter from George W.P. Hunt, Ariz. Governor, to Dodd L. Greer (July 21, 1928) (on file with the Arizona State Library); Letter from Dodd L. Greer to George W.P. Hunt, Ariz. Governor (July 21, 1928) (on file with the Arizona State Library).

51. Letter from George W.P. Hunt, Ariz. Governor, to Dodd L. Greer (July 21, 1928) (on file with the Arizona State Library); Letter from Dodd L. Greer to George W.P. Hunt, Ariz. Governor (July 21, 1928) (on file with the Arizona State Library); Letter from John W. Murphy, Ariz. Attorney Gen., to Earl Anderson (July 27, 1928) (on file with the Arizona State Library); Letter to Earl Anderson from John W. Murphy, Ariz. Attorney General (July 27, 1928) (on file with the Arizona State Library); Letter from Samuel L. Pattee to George W.P. Hunt, Ariz. Governor (Sept. 22, 1928) (on file with the Arizona State Library).

52. Letter from Samuel L. Pattee to George W.P. Hunt, Ariz. Governor (Sept. 22, 1928) (on file with the Arizona State Library).

53. Letter from George W.P. Hunt, Ariz. Governor, to Dodd L. Greer (July 21, 1928) (on file with the Arizona State Library); Letter from Dodd L. Greer to George W.P. Hunt, Ariz.

remedy to exclude reservation voters as a class, Governor Hunt was advised to “adopt a systematic course of challenging Indians at the time of election, which course, if persisted in, would probably result in limiting the numbers seeking to vote.”⁵⁴ The Republican Party reported that challenges had been filed against the voter registration of Indian voters in Apache County.⁵⁵

The first challenge to a county’s rejection of reservation Indians’ voter registration occurred in 1928, the first presidential election following the passage of the Indian Citizenship Act. Peter Porter and Rudolph Johnson, Pima Indians from the Gila River Indian Reservation, attempted to register to vote in Pinal County.⁵⁶ The Pinal County recorder’s office rejected the registration forms.⁵⁷ Porter and Johnson filed a petition for writ of mandamus with the Arizona Supreme Court, directing the Pinal County recorder to enter their names on the voting register.⁵⁸

The Pinal County recorder cited two reasons that Indians do not qualify to vote under the Arizona Constitution based on residency and ward status.⁵⁹ First, the County argued that Indians were not allowed to register to vote because they lived on Indian reservations, are not subject to the laws of the state, and consequently did not reside in the State of Arizona.⁶⁰ The Court rejected the argument and held that “all Indian reservations in Arizona are within the political and governmental, as well as geographical, boundaries of the state.”⁶¹ Therefore, Indians are residents of the state of Arizona.⁶²

Second, the County argued that Indians as wards of the United States are individuals under guardianship, and therefore not eligible to vote.⁶³ The Arizona Constitution prevented those who were “under guardianship, *non compos mentis*, or insane” from voting.⁶⁴ Relying on *Cherokee Nation v.*

Governor (July 21, 1928) (on file with the Arizona State Library); Letter from John W. Murphy, Ariz. Attorney Gen., to Earl Anderson (July 27, 1928) (on file with the Arizona State Library).

54. Letter from Samuel L. Pattee to George W.P. Hunt, Ariz. Governor (Sept. 22, 1928) (on file with the Arizona State Library).

55. *Id.*; Letter from Hiram S. Corbett, Republican Nat’l Comm. Member, to John W. Murphy, Ariz. Attorney Gen. (July 23, 1928) (on file with the Arizona State Library).

56. *Porter v. Hall*, 271 P. 411, 413 (Ariz. 1928); *Indians Can Vote—Court Decision*, CASA GRANDE VALLEY DISPATCH, Sept. 21, 1928.

57. *Porter*, 271 P. at 412.

58. *Id.*

59. *Id.* at 412–13.

60. *Id.*

61. *Id.* at 415.

62. *Id.*

63. *Id.* at 412–13.

64. *Id.* at 414 (citing ARIZ. CONST., art. VII, § 2). Article Seven of the Arizona Constitution was amended in 2004. Article Seven, Section Two, Subsection C now reads that an individual

Georgia, the Court found that that federal guardianship relationship existed because Indians were not capable of managing their own affairs.⁶⁵ In making this determination, the Court pointed to the state's lack of jurisdiction over reservation Indians.⁶⁶

[S]o long as the federal government insists that, notwithstanding their citizenship, their responsibility under our law differs from that of the ordinary citizen, and that they are, or may be, regulated by that government, by virtue of its guardianship, in any manner different from that which may be used in the regulation of white citizens, they are, within the meaning of our constitutional provision, "persons under guardianship," and not entitled to vote.⁶⁷

For two more decades, reservation Indians were denied the right to vote in Arizona based on this misapplication of the federal trust relationship.⁶⁸

In 1940, Congress passed the Nationality Act of 1940, reaffirming the citizenship of Native Americans.⁶⁹ Native Americans registered for the draft for the first time following this Act. Ten percent of the Native American population served in World War II, a larger proportion than any other population.⁷⁰ Many Native Americans in Arizona joined the armed services. Navajo and Hopi Code Talkers were used in military campaigns to send coded messages that could not be broken by adversaries.⁷¹ Navajo Code

must be adjudicated incapacitated to be considered unqualified to vote. ARIZ. CONST., art. VII, § 2, cl. C.

65. *Porter*, 271 P. at 417; *Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831) (finding that the relationship between Indians and the federal government is that of "a ward to his guardian").

66. *Porter*, 271 P. at 418.

67. *Id.* at 419.

68. It is important to note that most Native Americans in Arizona lived on an Indian reservation during this time period. See *supra* note 34 and accompanying text.

69. Congress revised and codified the nationality laws of the United States. Section 201(b) of the Nationality Act of 1940 affirmed that "[a] person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe . . . shall be nationals and citizens of the United States at birth." Nationality Act of 1940, Pub. L. No. 76-853, § 201(b), 54 Stat. 1137, 1138.

70. More than 25,000 reservation Indians participated. "The combined figure of 44,500 was more than ten percent of the Native American population during the war years. This represented one-third of all able-bodied Indian men from 18 to 50 years of age. In some tribes, the percentage of men in the military reached as high as 70 percent. Also, several hundred Indian women served in the WACS, WAVES, and Army Nurse Corps." Thomas D. Morgan, *Native Americans in World War II*, ARMY HIST., Fall 2005, at 22, 23, <http://www.history.army.mil/armyhistory/AH35newOCR.pdf>.

71. Only recently were Hopis recognized for their service in World War II as code talkers. Joel Quebec, *Inaugural Hopi Code Talkers Recognition Day Held*, U.S. ARMY (Apr. 26, 2012), http://www.army.mil/article/78728/Inaugural_Hopi_Code_Talkers_Recognition_Day_held/. My husband's uncle, Rex Pooyouma, was a Hopi Code Talker during World War II. *Hopi Code*

Talkers were instrumental to the military victory at Iwo Jima.⁷² Another Arizona Indian, Ira Hayes, a Pima from the Gila River Indian Community, participated in the flag raising at Iwo Jima.⁷³ Unfortunately, Arizona's Indian veterans returning from the war discovered that while they fought for freedoms abroad, they were still limited in their freedoms at home. One of these freedoms was the right to vote.⁷⁴

Native American veterans returning from war were denied the right to vote. Arizona's Secretary of State requested an opinion from the State Attorney General as to whether Indian veterans who lived off the reservation could register to vote.

A number of Indians who are discharged veterans of the military forces and who are now working and do not intend to return to their reservations wish to register and vote in this state. The question has been raised as to whether or not such Indians are eligible to register and vote in this state.⁷⁵

These Indians served in the United States military, lived off the reservation and were employed off of the reservation. The Attorney General found that the federal guardianship relationship discussed in *Porter v. Hall* continued to prevent Indians from voting. He believed that the right to vote must be determined on a case-by-case basis vote depending on whether the individual satisfied the voter eligibility requirements and was released from

Talker Rex Pooyouma Passes Away, NAVAJO-HOPI OBSERVER (Oct. 27, 2010), <http://nhonews.com/main.asp?SectionID=1&SubsectionID=1&ArticleID=12971>.

72. KENNETH WILLIAM TOWNSEND, WORLD WAR II AND THE AMERICAN INDIAN 148 (2000).

73. DONALD L. FIXICO, TERMINATION AND RELOCATION: FEDERAL INDIAN POLICY, 1945–1960 3 (1986); TOWNSEND, *supra* note 72, at 131; Anne T. Denogean, *Denogean: 60 Years Ago in Arizona, Indians Won Right to Vote*, TUCSON CITIZEN (July 25, 2008), <http://tucsoncitizen.com/morgue/2008/07/25/91886-denogean-60-years-ago-in-arizona-indians-won-right-to-vote/>; Letter from George Sidney P. Osborn, Ariz. Governor, to W.J. Cummings (Sept. 13, 1945) (on file with the Arizona State Library).

74. C.J. Calvert, a Hopi Indian, petitioned the Governor of Arizona for the right to vote for Indian veterans. Letter from C.J. Calvert to Sidney P. Osborn, Ariz. Governor (May 10, 1946) (on file with the Arizona State Library).

75. *Id.*; Letter from John L. Sullivan, Ariz. Attorney Gen., & John W. Rood, Assistant Attorney Gen., to Dan E. Carvey, Ariz. Secretary of State (April 4, 1946) (on file with the Arizona State Library).

guardianship.⁷⁶ Thus, even Indians who moved off of the reservation were not deemed eligible to vote.⁷⁷

According to the 1940 Census, Native Americans continued to be the largest minority in the state of Arizona, totaling 11.5% of the state's population.⁷⁸ One-sixth of all Indians in the country lived in Arizona.⁷⁹ Thus, Arizona's policies on Indian voting resulted in the disenfranchisement of thousands of Native Americans. Frank Harrison, a World War II Veteran, and Harry Austin, both members and residents of the Fort McDowell Yavapai Nation, filed suit to reverse the 1928 Arizona Supreme Court decision which denied Native Americans the right to vote.⁸⁰ On July 15, 1948, the Court overturned the *Porter v. Hall* decision, recognizing the Native American right to vote in state elections.⁸¹ The Court noted that a report by the President's Committee on Civil Rights described the *Porter* case as being discriminatory.

In past years, American Indians have also been denied the right to vote and other political rights in a number of states. Most of these restrictions have been abandoned, but in two states, New Mexico and Arizona, Indians continue to be disfranchised. The constitution of New Mexico withholds suffrage from Indians not taxed. In Arizona the state constitution has been interpreted to deny the vote to Indians as being persons under guardianship. Protest against these legal bans on Indian suffrage in the Southwest have gained force with the return of Indian veterans to those states.⁸²

In *Harrison*, the Court sought to reverse the past discrimination and held that "person under guardianship" in the Arizona Constitution meant judicially established guardianship and "has no application to the plaintiffs or to the Federal status of Indians in Arizona as a class."⁸³

76. Letter from John L. Sullivan, Ariz. Attorney Gen., & John W. Rood, Assistant Attorney Gen., to Dan E. Carvey, Ariz. Secretary of State (April 4, 1946) (on file with the Arizona State Library).

77. According to Arizona Attorney General Joe Conway, the *Porter* ruling applied to all Indians, even those Indians who moved off of the reservation. Houghton, *supra* note 36, at 19.

78. In 1940, Indians comprised "11.5% of State's population of whom 24,317 are over twenty-one years of age." *Harrison v. Laveen*, 196 P.2d 456, 458 (1948) (internal citation and parentheses omitted).

79. *Id.* at 460.

80. *Id.* at 457.

81. *Id.* at 463.

82. *Id.* at 458 (quoting PRESIDENT'S COMM. ON CIVIL RIGHTS, *supra* note 32, at 40).

83. *Id.* at 463 (holding that Indians living on Indian reservations should in all respects be allowed the right to vote).

C. *The Voting Rights Act Ushers Change for Arizona Indians*

Notwithstanding the victory in *Harrison v. Laveen*, Arizona Indians were denied access to the ballot for the next two decades.⁸⁴ A congressional survey noted that many Indians in Arizona did not vote because they were illiterate, could not speak English, not trained for citizenship, and feared that if they registered to vote, they would have to pay taxes.⁸⁵ The biggest obstacle preventing Indians from voting was the imposition of English literacy tests.⁸⁶ Arizona imposed English literacy tests, limiting registration to those who could read the United States Constitution in English and write his name.⁸⁷ Thus, only Native Americans literate in the English language were eligible to vote. In 1948, illiteracy rates for Native Americans were estimated at eighty to ninety percent.⁸⁸ Schools for Native Americans were not sufficient to educate the school age population.⁸⁹ Thus, most Arizona Indians still could not vote due to the literacy requirement. Arizona defended the use of the literacy test as a voter requirement and fought federal attempts to eliminate it. It was only in the 1970s, after federal law prohibited the use of the tests, that Arizona Indians finally achieved voting rights.

In 1965, Congress passed the Voting Rights Act to ensure that all Americans have the right to vote.⁹⁰ While many provisions of the Act are permanent, several key provisions have expirations, including language assistance, preclearance, and the use of federal poll observers. Section 2 of the Voting Rights Act is permanent and prohibits voting practices or procedures that results in a denial or abridgment on the right to vote on

84. Access to the ballot box was directly impacted by literacy requirements. *Oregon v. Mitchell*, 400 U.S. 112, 153, 234 (1970); James Tucker et al., *Voting Rights in Arizona: 1982–2006*, 17 S. CAL. REV. L. & SOC. JUST. 283, 283–85 (2008).

85. HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 85TH CONG., PRESENT RELATIONS OF THE FED. GOV'T TO THE AM. INDIAN 169–72 (Comm. Print 1958).

86. For a discussion of the history of the English literacy test, see Tucker et al., *supra* note 84, at 283–85.

87. See *Mitchell*, 400 U.S. at 153; *Harrison v. Laveen*, 196 P.2d 456, 463 (1948); Op. Ariz. Att'y Gen. 60-6 (Dec. 10, 1959).

88. Tucker et al., *supra* note 84, at 285 (citing DVD: The History of Indian Voting In Arizona (Inter Tribal Council of Arizona, Inc. 2004)). In the 1960s, about half of the Navajo voting age population could not pass a literacy test. See MCCOOL ET AL., *supra* note 13, at 19.

89. In the mid 1940s, school facilities could only accommodate approximately one quarter of Navajo school age children. *Unless We Are Educated: Deplorable Condition of Navajo Schooling*, Box 32, Off. Governor, RG 1, Arizona State Library; *Navajo Tribe See Progress with Program*, HOLBROOK TRIBUNE-NEWS, Jan. 24, 1946.

90. The Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 52 U.S.C. §§ 10301–10314, 10501–10508, 10701–10702. For a detailed history of the events leading to the passage of the Voting Rights Act, see generally BRIAN K. LANDSBERG, *FREE AT LAST TO VOTE: THE ALABAMA ORIGINS OF THE 1965 VOTING RIGHTS ACT* (2007).

account of race or membership in a language minority group.⁹¹ The Voting Rights Act has been amended and extended several times, most recently in 2006.⁹² Section 5 preclearance requires covered jurisdictions to preclear any changes in voter practices or procedures and demonstrate that they do not have a discriminatory effect. Section 5 preclearance requires states with a documented history of discriminatory voting practices, such as Arizona, to obtain approval from federal officials before they change election laws. Section 5 jurisdictions included those that used a test or device for voting and had low voter participation.

The 2006 amendments included Section 203, which requires that election materials are translated for citizens with limited English proficiency, and extended the Attorney General's authority to send federal observers to monitor elections in order to prevent efforts to intimidate minority voters at the polls.⁹³ The 2006 amendments restored the original intent of the Section 5 preclearance provisions, which was weakened by the Supreme Court's decisions in *Georgia v. Ashcroft*⁹⁴ and *Reno v. Bossier Parish School Board*.⁹⁵

The State of Arizona and Apache County were included in the original list of jurisdictions covered by Section 5 of the Voting Rights Act.⁹⁶ Navajo and Coconino Counties were added to the list shortly thereafter due to their

91. 52 U.S.C. § 10302.

92. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577. Arizona Congressman J.D. Hayworth initially opposed the reauthorization of the language minority provisions of the Voting Rights Act explaining that "learning English is essential to being full-fledged participants in pursuing the American dream," and the language minority provisions "encourage the linguistic division of our nation and contradict the 'Melting Pot' ideal that has made us the most successful multi-ethnic nation on [E]arth." Letter from Peter King et al., to James Sensenbrenner, Jr., Chairman, House Judiciary Comm. (Feb. 3, 2006), <http://www.eagleforum.org/column/2006/mar06/ballots56signers2306.pdf> (signed by Congressman J.D. Hayworth). The focus of the opposition was on the need for immigrants to learn English. *Id.* However, the focus on non-English speaking immigrants directly impacts and conflicts with the maintenance and preservation of Native American languages. Despite this initial opposition, the Voting Rights Act was reauthorized and supported by the Arizona Congressional delegation. Pub. L. No. 109-246.

93. Pub. L. No. 109-246. The 2006 renewal of the Voting Rights Act did not reauthorize federal examiners, but it maintains observers. *Id.* It also includes a provision for expert fees and other reasonable litigation expenses. *Id.*

94. 539 U.S. 461 (2003).

95. 528 U.S. 320 (2000).

96. Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, as Amended, 28 C.F.R. § 51 app. (2011). The enactment of the Voting Rights Act in 1965 included a temporary prohibition of literacy tests in covered jurisdictions. *See Apache Cty. v. United States*, 256 F. Supp. 903, 906 (D.D.C. 1966).

low registration among Native Americans.⁹⁷ As a result of this coverage, the Arizona literacy tests were suspended in the heavily Native American populated counties of Apache, Coconino, and Navajo Counties.⁹⁸ Within months after the coverage determinations were made, the State and these three counties filed an action in the District Court for the District of Columbia seeking to bail out of Section 5 coverage. In *Apache County v. United States*, the State of Arizona and the three counties successfully obtained a declaratory judgment to reinstate the literacy test claiming that it was an evenhanded state voter qualification and that it had not been used in the previous five years for the purpose or with the effect of denying or abridging the right to vote on account of race or color.⁹⁹ The U.S. Attorney General's Office consented to the declaratory judgment, but the Navajo Nation and thirty-one of its members moved to dismiss the action and requested an investigation.¹⁰⁰ Not surprisingly, the three counties supplied "affidavits and letters of voting officials . . . stating that they have not applied the literacy test in a discriminatory matter [sic]"¹⁰¹ Although the purpose of the literacy tests was to exclude minorities from voting,¹⁰² the Court found that "[i]t is not material evidence that the test has been used to accomplish discrimination."¹⁰³ The basis for this decision is that the actual use of literacy tests were lawful at the time, so the inquiry focused on whether the tests were applied in a discriminatory manner, not whether the tests resulted in discrimination.¹⁰⁴

After the counties successfully bailed out of Section 5, the State of Arizona continued to discriminate against Indian voters through its imposition of English literacy tests.¹⁰⁵ These tests were not repealed until 1972, after a battle that led to the U.S. Supreme Court.¹⁰⁶ In 1970, Congress adopted a nationwide prohibition on literacy tests for a five-year period,

97. 28 C.F.R. § 51 app. (2011).

98. Tucker et al., *supra* note 84, at 286.

99. *Apache Cty.*, 256 F. Supp. at 905, 913.

100. The court denied the Navajo request for intervention finding that the Navajo Nation and its members were adequately represented by the Attorney General. *Id.* at 906.

101. *Id.* at 908.

102. See Tucker et al., *supra* note 84, at 286.

103. *Apache Cty.*, 256 F. Supp. at 911.

104. "The constitutionality of literacy tests as such is clear." *Id.* at 910 (citing *Lassiter v. Northampton Cty. Bd. of Elections*, 360 U.S. 45, 79 (1959)).

105. See ARIZ. REV. STAT. ANN. § 16-101(A)(4)–(5) (1956).

106. See *Voting Rights Act: Evidence of Continued Need*, Vol. I: *Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 1372 (2006) (appendix to the statement of Wade Henderson).

which again preempted the use of Arizona's literacy tests.¹⁰⁷ The State of Arizona and other states challenged the constitutionality of the literacy test ban. In *Oregon v. Mitchell*, the Supreme Court upheld the prohibition against literacy test requirements because "literacy tests have been used to discriminate against voters on account of their color."¹⁰⁸ The Supreme Court noted that "Arizona also has a serious problem of deficient voter registration among Indians."¹⁰⁹ The Court recognized that non-English speakers may make use of resources in their native languages in order to responsibly and knowledgeably cast a ballot.¹¹⁰

The 1970 coverage formula included, as one of the measures of voting discrimination, registration and turnout in the 1968 presidential election. As a result, Apache, Coconino, and Navajo Counties again became covered by Section 5 along with five other Arizona counties.¹¹¹ In 1975, the prohibition against literacy tests was made a permanent part of the Voting Rights Act.¹¹²

D. Obstacles to Exercising the Right to Vote

With the removal of literacy tests as a prerequisite to voting, Native Americans began to participate in state and federal elections. This participation directly impacted the outcome of elections.¹¹³ The non-Indian majority was threatened by Indian participation, and there were a number of challenges to Indians' right to vote and to hold office. Many of these challenges occurred in Apache County, one of only a few counties within the United States in which the predominant languages spoken are American Indian. Of these languages, the most commonly used is Navajo, a historically unwritten language.¹¹⁴

107. Voting Rights Act of 1965, 52 U.S.C. § 10501 (2015).

108. 400 U.S. 112, 117 (1970) (because "literacy tests have been used to discriminate against voters on account of their color, the Act enforces the Fourteenth and Fifteenth Amendments by barring the use of such tests in all elections, state and national, for a five-year period").

109. *Id.* at 132.

110. *Id.* at 146 (quoting *Katzenbach v. Morgan*, 384 U.S. 641, 655 (1966)).

111. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1370 (appendix to the statement of Wade Henderson); Tucker et al., *supra* note 84, at 286.

112. Tucker et al., *supra* note 84, at 286–87.

113. State Attorney General Bruce Babbitt credited his victory to the Indian vote in the mid-70s. MCCOOL ET AL., *supra* note 13, at 20. Native American voters turned out in record numbers in 1976 and are credited with helping to elect a new Democratic senator and congressman. *Id.*

114. Considering the Navajo Reservation as a whole, including parts of the States of Arizona, New Mexico and Utah, over one-third of the voting age citizens on the Navajo Nation

In one of the first elections after literacy tests were banned, Tom Shirley, a Navajo candidate residing on the Navajo Reservation in Apache County, obtained an overwhelming majority of votes for the office of Supervisor in Supervisorial District Number 3 of the Apache County Board of Supervisors.¹¹⁵ The unsuccessful non-Indian candidate obtained a preliminary injunction to prevent the Board of Supervisors from certifying Shirley as the successful candidate, prohibiting Shirley from taking office.¹¹⁶ The disgruntled opponent challenged the ability of Navajos living on the Reservation from holding office because reservation Indians do not own real property subject to taxation and alleged that reservation Indians are immune from service of process.¹¹⁷ The Arizona Supreme Court quashed the preliminary injunction and directed that Shirley be certified by the Apache County Board of Supervisors as the duly elected Supervisor.¹¹⁸ The Court reaffirmed the right of Indians to vote, and their eligibility to seek office.¹¹⁹

After the Arizona Supreme Court's decision in *Shirley*, non-Indians in Apache County feared that Navajos would be elected to the County supervisor positions. In an effort to prevent Navajo candidates from success in Board of Supervisor elections, Apache County restructured the supervisor districts.¹²⁰ The Board of Supervisors drew three unequal supervisor districts, packing Indians into one district: District 1 had a population of 1,700, of whom 70 were Indian; District 2 had a population of 3,900, of whom 300 were Indian; and District 3 had a population of 26,700, of whom 23,600 were Indian.¹²¹ Indian voters challenged the revised districts for violating the one-person, one-vote principle, the Fourteenth Amendment, the Voting Rights Act, and the Civil Rights Act.¹²² Apache County claimed that the Indians are not citizens of the United States and that the Indian Citizenship Act granting Indians citizenship was unconstitutional.¹²³ A three-judge federal court found that the districts were malapportioned and rejected Apache County's arguments regarding the right of Native Americans to vote.¹²⁴

Reservation are limited-English proficient and over one-quarter are illiterate. Tucker et al., *supra* note 84, at 321.

115. *Shirley v. Apache Cty.*, 513 P.2d 939, 941 (Ariz. 1973).

116. *Id.*

117. *Id.*

118. *Id.* at 945.

119. *Id.*

120. *Goodluck v. Apache Cty.*, 417 F. Supp. 13, 14 (D. Ariz. 1975), *aff'd*, 429 U.S. 876 (1976).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 16.

Efforts to thwart Native Americans from voting continued in Apache County.¹²⁵ In the mid-1970s, white citizens in Apache County sought to avoid integration of Indian students into the public schools by holding a special bond election to fund a new school in the almost entirely non-Indian southern part of the county.¹²⁶ Indian turnout for the election was abnormally low. An investigation uncovered that the low turnout resulted from the closure of nearly half of the polling places on the reservation requiring Indians to travel greater distances to vote, the total lack of language assistance for Navajo voters, the absence of Navajo language informational meetings regarding the bond election, and the use of English-only in the implementation of absentee voting procedures.¹²⁷ This litigation ended in a Consent Decree in which Apache County agreed to a number of changes to the blatant discrimination in voting practices.¹²⁸

Discrimination continued against Indian voters from the Navajo, Apache, and Hopi Tribes.¹²⁹ Because of the voting impediments for Indian voters, Consent Decrees have been entered into between the State of Arizona and the federal government to ensure that election practices and procedures provide Native Americans with an equal opportunity to participate in the electoral process. In 1989, the United States filed suit against the State of Arizona for “unlawfully deny[ing] or abridg[ing] the voting rights of Navajo citizens” residing in Navajo, Apache, and Coconino Counties in violation of the Voting Rights Act.¹³⁰ The Arizona counties settled the claims pursuant to a Consent Decree which required the establishment of the Navajo Language Election Information Program including the employment of outreach workers to assist in all aspects of voting by Indians.¹³¹ This program has resulted in more opportunities for Navajos to register to vote and vote on Election Day.¹³²

In 1994, the Department of Justice brought an enforcement action to enjoin Navajo and Coconino Counties from holding judicial elections for four new judicial divisions created without seeking preclearance under Section

125. See *Apache Cty. High Sch. Dist. No. 90 v. United States*, No. 77-1815 (D.D.C. June 12, 1980).

126. Tucker et al., *supra* note 84, at 324.

127. *Id.* at 325.

128. *Id.* at 326.

129. Tucker et al., *supra* note 84, at 326–28.

130. *United States v. Arizona*, No. 88-1989 (D. Ariz. May 22, 1989) (consent decree) (as amended Sept. 7, 1993).

131. *Id.*

132. See *2006 Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 33–47 (2005) (statement of Penny Pew).

5.¹³³ The district court held that the judgeships constituted a “covered change” and enjoined the judicial elections until preclearance was obtained.¹³⁴

However, the right to include Indians in the judiciary continued. In 2003, the Honorable James Weiers, then Speaker of the House for the Arizona State Legislature, questioned whether a Navajo tribal member may serve as a member of the Commission on Appellate Court Appointments.¹³⁵ The specific request questioned “the ability of a member of a sovereign nation to participate ‘in the selection process of judges to courts that this individual may not be subject to as a result of his tribe’s status.’”¹³⁶ The Attorney General affirmed the ability of Native Americans to participate in all aspects of democracy, including serving on court commissions.¹³⁷

E. Redistricting

Efforts to reduce Indian participation, voting strength and the ability to elect candidates of their choice through redistricting have been challenged every cycle since the Voting Rights Act was enacted. In the 1960s, the court rejected attempts to base apportionment on the number of registered voters to reduce Indian voter strength.¹³⁸ In the 1970s, the Chairman McDonald of the Navajo Nation intervened in the challenge of a legislative reapportionment plan that divided the Navajo Reservation into three separate state legislative districts reducing the ability of Navajo voters to elect candidates of their choice.¹³⁹ The initial plan in *Klahr v. Williams* maintained the Navajo Reservation in one single legislative district.¹⁴⁰ An incumbent from this district successfully amended the plan to divide the Navajo Reservation among three districts.¹⁴¹ No doubt his intent was to create a district to ensure

133. United States v. Arizona, No. 94-1845, 1994 U.S. Dist. LEXIS 17606, at *1 (D. Ariz. Oct. 17, 1994).

134. *Id.* at *18.

135. ARIZ. OFFICE OF THE ATT’Y GEN., NO. I03-007, TRIBAL MEMBER ELIGIBILITY TO SERVE ON COMMISSION ON APPELLATE COURT APPOINTMENTS 1 (2003).

136. *Id.* at 3 n.3.

137. *Id.* at 3.

138. “Chapter 1 provides, further, that the number of legislators apportioned to each election district shall be apportioned among its legislative districts on the basis of voter registration.” *Klahr v. Williams*, 303 F. Supp. 224, 225 (D. Ariz. 1969) (finding that state statute allowing a deviation of 16% failed to meet the constitutional requirement of equal population). The court noted that the Indians in Apache and Navajo counties would be underrepresented if voter registration is used as the basis for redistricting. *Id.* at 226 n.6.

139. *Klahr v. Williams*, 339 F. Supp. 922, 924 (D. Ariz. 1972).

140. *Id.* at 927.

141. *Id.*

his reelection with a larger non-Indian population. The court found that the legislative plan violated the Equal Protection Clause because it was done with the intent of “destroy[ing] the possibility that the Navajos, if kept within a single legislative district, might be successful in electing one or more of their own choices to the Legislature.”¹⁴² The court adopted Chairman McDonald’s proposed redistricting plan.¹⁴³ In the 1980s, the San Carlos Apache Tribe successfully objected to a proposed redistricting plan that aimed to split and dilute the Apache vote.¹⁴⁴ The Department of Justice objected to the plan on the grounds that the plan had a discriminatory effect.¹⁴⁵ The District Court found the proposed plan had “the effect of diluting the San Carlos Apache Tribal voting strength and dividing the Apache community of interest.”¹⁴⁶ In the 1990s, the Arizona legislature reached an impasse, and a three-judge panel was convened to draw a redistricting plan. Indian tribes intervened, and the court adopted the “Indian Compromise Plan.”¹⁴⁷ In adopting this plan, the Court noted that

Although there has been no proof that the Native Americans are entitled to a reapportionment plan designed to maximize their political advantage, they should not be engulfed in a structure that minimizes their potential for meaningful access to the political process. The Indian Intervenor proved that there have been widespread practices of discrimination against Native Americans. The court also took judicial notice of that fact. The results achieved through the court’s plan will meet the goals of the Indian Intervenor.¹⁴⁸

Arizona’s geography and demography create certain challenges for redistricting. In *Klahr v. Williams*, the court recognized the immense size of the Navajo Reservation. The Navajo Nation is the largest tribe in the United States, comprising over 300,000 members and occupying approximately 25,000 square miles of trust lands within Arizona, New Mexico, and Utah.¹⁴⁹

142. *Id.*

143. *Id.* at 928.

144. *Goddard v. Babbitt*, 536 F. Supp. 538, 539 (D. Ariz. 1982).

145. *Id.* at 541.

146. *Id.*

147. *See* *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 689 (D. Ariz. 1992) *aff’d sub nom.* *Hispanic Chamber of Commerce v. Arizonans for Fair Representation*, 507 U.S. 981 (1993).

148. *Id.* at 690.

149. *Klahr v. Williams*, 339 F. Supp. 922, 927 (D. Ariz. 1972); Bill Donovan, *Census: Navajo Enrollment Tops 300,000*, NAVAJO TIMES (July 7, 2011), http://navajotimes.com/news/2011/0711/070711census.php#.VjEvS9D-_FI. According to the 2010 U.S. Census, approximately 173,000 individuals live on the Navajo Reservation,

The Arizona portion of the reservation “is larger in area than any of Arizona’s fourteen counties, excepting Coconino; and the portion of the Reservation within Arizona is 60 times larger in area than Phoenix, Arizona’s largest city.”¹⁵⁰ Home to twenty-two Indian Tribes, a balance must be struck to satisfy one-person one-vote while protecting Native American voters in the redistricting process.

Arizona is unique. Approximately 27 percent of Arizona’s land is located on Indian reservations, far and away the highest percentage in the United States. Other large portions of the state are devoted to National Parks and Forests. These factors, in part, account for the fact that Arizona is sparsely populated.

Arizona’s urban areas [metropolitan Phoenix and Tucson] contain the overwhelming bulk of the state’s population.¹⁵¹

Since the 1960s, Arizona’s population distribution has only become more pronounced. The rural areas have remained sparsely populated while the metropolitan areas of Phoenix and Tucson have continued to experience rapid growth, resulting in a change from six Congressional districts after the 1990 census, to eight Congressional districts after the 2000 census, and nine Congressional districts after the 2010 census.

Until the 1990s, the redistricting process in Arizona was controlled by the Arizona legislature and was highly politicized. In 2000, Arizona voters approved Proposition 106, a citizen initiative that took redistricting out of the hands of the legislature and assigned responsibility to the Arizona Independent Redistricting Commission.¹⁵² This constitutional change also provided a procedural framework for the Commissioners to follow and established criteria for the redistricting process.

The Arizona Constitution mandates four phases that the Commission must follow: (i) developing the initial grid, (ii) adjusting the grid, (iii) holding a public comment period, and (iv) finalizing the maps.¹⁵³ Until 2013, the Commission was required to submit these maps for preclearance. In addition

approximately 97% of whom are American Indian. TINA NORRIS ET AL., U.S. CENSUS BUREAU, THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010 14 tbl.6 (2012), <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.

150. *Klahr*, 339 F. Supp. at 927.

151. *Arizonans for Fair Representation*, 828 F. Supp. at 687.

152. *2000 Ballot Propositions: Proposition 106*, ARIZ. SEC’Y OF STATE (Nov. 7, 2000), <http://apps.azsos.gov/election/2000/Info/pubpamphlet/english/prop106.pdf>; Mark Joseph Stern, *Power to the Partisans*, SLATE (Mar. 3, 2015), http://www.slate.com/articles/news_and_politics/supreme_court_dispatches/2015/03/arizona_state_legislature_and_redistricting_commission_arguments_supreme.html.

153. ARIZ. CONST. art. IV, pt. 2, § 1.

to meeting the requirements of the United States Constitution, equal population, and the Voting Rights Act, redistricting must follow four neutral criteria to the extent practicable: (i) district boundaries shall respect communities of interest; (ii) districts shall be compact and contiguous; (iii) district lines shall use visible geographic features, city, town and country boundaries and undivided census tracts; and (iv) competitive districts should be favored as long as they do not cause detriment to the other goals.¹⁵⁴

The Navajo Nation, the San Carlos Apache Tribe, and the Hopi Tribe were involved in litigation regarding the neutral redistricting criteria after the 2001 maps were created.¹⁵⁵ In order to satisfy the request of the Hopi Tribe to be in a separate district from the Navajo Nation, the Commission carved a 103-mile serpentine corridor through the unnavigable Colorado River.¹⁵⁶ This created two non-compact districts, separated forty-two Navajos from their community of interest, and split a census tract.¹⁵⁷ The Navajo Nation unsuccessfully challenged the congressional maps arguing that the Commission failed to create compact and contiguous districts. The court upheld the decision stating that it has flexibility in applying the neutral criteria.¹⁵⁸ The court stated that so long as there is a basis for a Commission's decisions, the final maps will be upheld.¹⁵⁹

Tribes actively participated in the most recent redistricting process.¹⁶⁰ The Commission was aware of the Section 5 requirements, and adopted a district to "strengthen the ability of Native Americans to elect their candidates of choice."¹⁶¹ This district includes the Navajo Nation, Hopi, Havasupai, Hualapai, Kaibab-Paiute, San Carlos Apache, White Mountain Apache, and Zuni Reservations.¹⁶² It has a Native American voting age population of 63.7%.¹⁶³

154. *Id.*

155. *See* Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 121 P.3d 843, 847 (Ariz. Ct. App. 2005).

156. *Id.* at 849.

157. *Id.* at 869. Congressional District 2 was included in the Top Ten Most Gerrymandered Congressional Districts in the United States. *The Top Ten Most Gerrymandered Congressional Districts in the United States*, PJ MEDIA (Nov. 11, 2010), <http://pjmedia.com/zombic/2010/11/11/the-top-ten-most-gerrymandered-congressional-districts-in-the-united-states/>.

158. Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, Ruling on Matter Taken Under Advisement 3, No. 2002-004380 (Nov. 6, 2003).

159. Ariz. Minority Coal. for Fair Redistricting, 121 P.3d at 870.

160. Ariz. Indep. Redistricting Comm'n., U.S. Dep't of Justice Submission under Section 5 of Voting Rights Act: IRC, State of Arizona Legislative Redistricting Plan 2-3 (Feb. 28, 2012).

161. *Id.* at 78.

162. *Id.* at 41.

163. *Id.* at 78.

III. CURRENT CHALLENGES

In 2002, Arizona Indians turned out in record numbers, securing passage of a voter initiative to expand Indian gaming and contributing to the victory of Governor Janet Napolitano.¹⁶⁴ Governor Napolitano credited the Indian vote with her victory.¹⁶⁵ Proposition 202, the Indian Gaming Preservation and Self-Reliance initiative, was a ballot proposition initiated by seventeen of the twenty-two tribes in the State of Arizona.¹⁶⁶ The Arizona Indian Gaming Association and member tribes engaged in vigorous get-out-the-vote campaigns.

With the wave of Proposition 202 and the election of a tribal friendly governor, tribes and tribal citizens were actively participating in the election process. For example, in 2000, Native Americans successfully elected three representatives and one senator to the state legislature.¹⁶⁷ Similarly, in 2002, Native Americans elected candidates of choice for all of the state legislature positions in the only Native American majority-minority district.¹⁶⁸ No one seemed to be concerned about any threat to voter qualification changes or challenges to Native voting strength.

Things began to change in 2004, and voters began to experience setbacks at the polls. After the decennial redistricting, efforts were made to ensure that Flagstaff had non-Indian representation in the only Native American majority-minority district in the state. Voters in Flagstaff were encouraged to single shot vote for their candidate.¹⁶⁹ As a result, Native Americans were not able to elect their candidates of choice. Navajo incumbent Sylvia Laughter

164. David Pittman, *80+% Support by Indians in Pima Boosted Napolitano*, TUCSON CITIZEN (Nov. 21, 2002), <http://tucsoncitizen.com/morgue2/2002/11/21/154133-80-support-by-indians-in-pima-boosted-napolitano/>; Tucker et al., *supra* note 84, at 292 (citing FIRST AMS. EDUC. PROJECT, NATIVE VOTE 2004: A NATIONAL SURVEY AND ANALYSIS OF EFFORTS TO INCREASE THE NATIVE VOTE IN 2004 AND THE RESULTS ACHIEVED 13, 19 (2005)); see ARIZ. SEC'Y OF STATE, STATE OF ARIZONA OFFICIAL CANVAS: 2002 GENERAL ELECTION 2, 14, <http://apps.azsos.gov/election/2002/General/Canvass2002GE.pdf>.

165. Daniel Kraker, *Tribes Turn Out to Vote*, HIGH COUNTRY NEWS (Aug. 16, 2004), <https://www.hcn.org/issues/280/14932>; ARIZ. SEC'Y OF STATE, *supra* note 164.

166. *Indian Gaming Proposition 202 Narrowly Wins Approval*, AZ DAILY SUN (Nov. 7, 2002), http://azdailysun.com/indian-gaming-proposition-narrowly-wins-approval/article_46955cde-7fbd-5128-aa02-0e9a62e68348.html.

167. Debra Norris was elected to Legislative District 11, which represents the Tohono O'odham Nation. ARIZ. SEC'Y OF STATE, *supra* note 164, at 9. Albert Tom, Sylvia Laughter, and Jack Jackson were elected in Legislative District 3, the sole Native American majority-minority district. *Id.* at 4, 8.

168. *Id.* at 2, 6.

169. Seth Muller, *Kirkpatrick Claims Win for State House Seat*, AZ DAILY SUN (Nov. 3, 2004), http://azdailysun.com/kirkpatrick-claims-win-for-state-house-seat/article_256c4cea-91e6-59c0-b271-3fbf7a9583a6.html.

was the candidate of choice on the Navajo Reservation, but she lost to Ann Kirkpatrick.¹⁷⁰ Further attempts to disenfranchise Indian voters occurred during the 2008 Arizona election when the candidacy of Navajo candidates were challenged because the addresses on the signature petitions included post office boxes and not physical addresses, an impossible task for reservation residents who do not have physical addresses. To date, no Indian has been elected to a statewide office.

Access to the polls began to be limited in other ways. These problems have been documented by the Arizona Native Vote Election Protection Project organized by the Indian Legal Clinic at the Sandra Day O'Connor College of Law.¹⁷¹ Issues include problems with voter registration, voter ID, provisional balloting, voters being turned away at the polls, and voter intimidation. The biggest challenge for Indian voters in the past decade has been the voter ID law.

The unknown challenge is the impact the Supreme Court's decision in *Shelby County v. Holder* will have on voters in Arizona. In *Shelby County*, the Plaintiff filed suit in the District of Columbia seeking declaratory relief that Section 4(b) and Section 5 of the Voting Rights Act (VRA) are unconstitutional and sought to enjoin the enforcement of these sections of the VRA.¹⁷² The Court expressly upheld the constitutionality of Section 5 under the 15th Amendment.¹⁷³ The Supreme Court did however find that the coverage formula needs to be updated. In finding Section 4b unconstitutional, the Court stated that "[t]he formula in that section *can no longer be used* as a basis for subjecting jurisdictions to preclearance."¹⁷⁴

Section 5 has made a difference in Arizona.¹⁷⁵ Indian voters continue to suffer from some of the highest poverty rates and unemployment rates in the country. Testimony before Congress supporting reauthorization of Section 5 revealed that on Arizona tribal reservations, poverty rates are above 42% with Fort Yuma's rate exceeding 94%.¹⁷⁶ Tribal advocates provided evidence to

170. *Id.*; see ARIZ. SEC'Y OF STATE, STATE OF ARIZONA OFFICIAL CANVAS: 2004 GENERAL ELECTION 7, <http://apps.azsos.gov/election/2004/General/Canvass2004General.pdf>.

171. Indian Legal Clinic, 2012 Arizona Native Vote—Election Protection Final Report (2013) (unpublished report) (on file with author) [hereinafter Indian Legal Clinic, 2012 Arizona Native Vote]; Indian Legal Clinic, 2014 Arizona Native Vote—Election Protection Final Report (2015) (unpublished report) (on file with author) [hereinafter Indian Legal Clinic, 2014 Arizona Native Vote].

172. 133 S. Ct. 2612, 2615 (2013).

173. *Id.* at 2629.

174. *Id.* (emphasis added).

175. Tucker et al., *supra* note 84, at 334–35.

176. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1383 (appendix to the statement of Wade Henderson).

Congress for the need for Section 5's preclearance provisions in Arizona. This was demonstrated by not only the historical impediments to suppress the Indian vote, but the continuing effects of past discrimination and continuing voter suppression efforts that disenfranchise Indian voters.¹⁷⁷ As a result of the Court's holding in *Shelby County*, Arizona and other jurisdictions listed under the 2006 Section 4(b) coverage formula are no longer subject to Section 5's preclearance obligation.¹⁷⁸ To date, the coverage formula has not been updated.

A. Voter ID—A Step Backwards for Indian Voters

In 2004, Arizona voters approved Proposition 200, the "Arizona Taxpayer and Citizen Protection Act."¹⁷⁹ Unlike other states that have enacted voter ID laws for the purported reason of combating voter fraud, Proposition 200 was enacted in order to "discourage illegal immigration."¹⁸⁰

Proposition 200 changed the in-person voting procedures to require all in-person voters to produce certain identification prior to receiving a regular ballot.¹⁸¹ Proposition 200 amends the procedures for obtaining a ballot by an elector, by requiring an elector voting in person to "present one form of identification that bears the name, address and photograph of the elector or two different forms of identification that bear the name and address of the

177. *Id.*

178. *Shelby County v. Holder*, 133 S. Ct. 2612, 2621 (2013) (invalidating the coverage formula for Section 5 preclearance).

179. Under Arizona law, ten percent of electors can propose statutory measures, and fifteen percent of electors can propose constitutional amendments through the Initiative process. ARIZ. CONST. art. IV, pt. 1, § 1(2). The legislature can also propose constitutional amendments to be referred to the ballot. *Id.* art. XXI, § 1. An initiative measure becomes law upon approval by a majority of the votes cast and upon proclamation of the Governor. *Id.* art. IV, pt. 1, § 1(5). The Governor has no veto power over initiative measures. *Id.* art. IV, pt. 1, § 1(6). Further, initiative measures can only be changed by (1) a court decision declaring the law invalid; or (2) a subsequent ballot measure. The Arizona Legislature has limited power to amend initiative measures and the legislature has no power to repeal initiative measures. *Id.* The Legislature can amend an initiative measure if the amendment furthers the purpose of the original measure upon three-fourths vote of the members of each house. *Id.*

180. 2004 Ballot Propositions: Proposition 200, ARIZ. SEC'Y OF STATE (Sept. 2004), http://apps.azsos.gov/election/2004/info/PubPamphlet/Sun_Sounds/english/prop200.htm.

181. Proposition 200 also changed the voter registration requirements to require proof of citizenship. *Id.* Since tribal citizens can use their tribal enrollment numbers to establish citizenship using the state form, voter registration is not an issue for Arizona tribal members. *But see Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247, 2252 (2013).

elector.”¹⁸² Proposition 200 did not define “identification” nor did it limit the types of identification that can be used to obtain a ballot.

Then Secretary of State Jan Brewer developed a list of acceptable forms of identification found in the “Procedure for Proof of Identification at the Polls” (“Procedures”) for the stated purpose of implementing the new voter ID law. The Procedures limit the type of identification that can be presented by electors before receiving a ballot at the polls on Election Day. Arizona is less strict than other states in that voters can cast a ballot if they can produce either (1) a government-issued photo identification¹⁸³ with the elector’s name and registration address or (2) two of the following forms of identification with the voter’s name and registration address: current utility bill, bank or credit union statement, Indian census card, property tax statement, tribal enrollment card, tribal identification, vehicle insurance card, or a recorder’s certificate.¹⁸⁴ The name and address on these two documents must “reasonably” appear to be the same. The Procedures allow counties some discretion to accept other types of ID that meet the statutory requirements.¹⁸⁵ The Secretary of State did include a special provision entitled “Identification Requirement for Native American Electors” to obtain a provisional ballot if the voter presents a tribal ID with only the voter’s name.¹⁸⁶

When the voter ID law was enacted, the Navajo Nation did not issue tribal IDs to its members. After Arizona developed voter ID requirements, the Navajo Nation considered creating a tribal ID program and requested monetary assistance from the Arizona legislature to develop such a system, but it received no offer of assistance. Navajo citizens do not need identification to obtain services on the Navajo Reservation or to vote in tribal elections. Under the Navajo belief system, identity is confirmed through the

182. ARIZ. REV. STAT. ANN. § 16-579 (2006).

183. The Procedures allow voters to use the following forms of photo ID: a valid Arizona driver license, valid Arizona nonoperating identification license, tribal enrollment card or other form of tribal identification, or valid United States federal, state, or local government issued identification. Jan Brewer, Ariz. Sec’y of State, Proof of Identification at the Polls (Sept. 6, 2005) (on file with the author).

184. The Arizona Secretary of State adopted a list of documents acceptable under the statute, limiting the types of documents allowable under the new voter identification requirements. *Id.*

185. The Procedures also provide that “[o]ther forms of identification not on this list must be deemed acceptable by the county election official in charge of elections and must establish the identity of the elector in accordance with the requirements of A.R.S. § 16-579(A).” *Voters Need the Proper ID at the Polls*, DOUGLAS DISPATCH (Oct. 27, 2010), http://www.douglasdispatch.com/news/voters-need-the-proper-id-at-the-polls/article_b22e0614-ed9c-5988-a124-f298ad087bd3.html.

186. Brewer, *supra* note 183, at 4.

traditional kinship system, which is used in the everyday life of Navajos.¹⁸⁷ While the Navajo Nation has recently begun issuing identification cards, these are limited to individuals who can pay the \$17 fee and travel to Window Rock.¹⁸⁸ To create a tribal ID card that is available to all of its citizens, the Navajo Nation would be required to create an office and allocate operating funds in at least each of the five agencies located on the Navajo Reservation serving the Nation's 110 chapters.

Prior to the enactment of Proposition 200 in 2004, Navajo elder Agnes Laughter voted in nearly all tribal, state, and federal elections since this Court enjoined Arizona's literacy test in *Oregon v. Mitchell*, clearing the way for Navajos like Ms. Laughter to exercise their right to vote.¹⁸⁹ On September 12, 2006, Ms. Laughter went to vote at her usual polling location, the Chilchinbeto Chapter House.¹⁹⁰ Two poll officials greeted her immediately before she entered the poll and asked if she had identification. She did not. They told her to wait outside while they went inside the Chapter House to speak with someone. Five minutes later, they emerged and invited her into the polling station.¹⁹¹ Inside, Mary Yazzie, a poll worker, recognized Ms. Laughter and greeted her in the Navajo language. Ms. Yazzie acknowledged Ms. Laughter as her older sister through their maternal clan Red-Running-into-the-Water.¹⁹² When she advised the precinct officials that she did not have identification and could not return within the statutory three days, she was asked to leave and was not given the opportunity to cast a provisional

187. *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297, at *58, *60-63 (D. Ariz. Sept. 11, 2006) (testimony of Leonard Gorman), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/ExhibitEx120.pdf>.

188. *Navajo Nation ID Cards Now on Sale*, ALBUQUERQUE J. (May 22, 2012, 6:32 AM), <http://www.abqjournal.com/108147/abqnewsseeker/navajo-nation-id-cards-now-on-sale.html>; Press Release, Navajo Nation, President Shelly Announces Distribution of Navajo Nation I.D. Card (May 21, 2012), http://www.navajonnsn.gov/News%20Releases/OPVP/2012/May12/52112_PresidentShellyAnnouncesDistributionOfNavajoNationI.D.Card.pdf.

189. At the time, the Court observed that "Arizona has a serious problem of deficient voter registration among Indians." *Oregon v. Mitchell*, 400 U.S. 112, 132 (1970).

190. Aff. of Agnes Laughter ¶3, Agnes Laughter Election Grievance Form, ARIZ. SEC'Y OF STATE (2006). Chilchinbeto is located north of the Navajo-Hopi partitioned lands, in the middle of the Navajo Reservation. According to the 2000 Census, Chilchinbeto had a population of 1,325. Trib Choudhary, Navajo Nation Dep't of Econ. Dev., NAVAJO NATION DATA FROM US CENSUS 2000, tbl.5. The population declined in 2010 to 1,165. U.S. CENSUS BUREAU (2010), <http://chilchinbeto.navajochapters.org/us-census-2010-total-population-cch.pdf>.

191. Aff. of Agnes Laughter ¶4, Agnes Laughter Election Grievance Form, ARIZ. SEC'Y OF STATE (2006).

192. *Id.* ¶5.

ballot as required by the newly implemented Help America Vote Act.¹⁹³ The voter ID requirements denied Ms. Laughter an opportunity to cast a ballot in the Primary Election.¹⁹⁴

Although Ms. Laughter and her family are well known in the community and the poll workers knew her, she was not permitted to vote.¹⁹⁵ The election officials, conscientious of their duties, had no choice under the Arizona statute but to deny her a regular ballot because she did not have ID.¹⁹⁶

Agnes Laughter's lack of qualifying identification is representative of Navajos, who like Ms. Laughter, have no form of photo ID whatsoever.¹⁹⁷ Ms. Laughter was born at home, in a Hogan, and does not have a birth certificate.¹⁹⁸ She had never before needed a photo ID and uses her thumbprint as her signature.¹⁹⁹ Her tribe, the Navajo Nation, did not issue photo IDs to its members.²⁰⁰ Because of this, she did not have a form of photo ID to meet the first requirement of the new voter ID law.²⁰¹

Although she was only asked for photo ID, she also lacked two alternative forms of ID in order to obtain a ballot. Ms. Laughter's home lacked electricity; she did not have a phone, a property tax statement, a vehicle, or vehicle insurance.²⁰² She only had a certificate of Indian blood and a census coin. The certificate lacked an address, and the census coin only contained a number.²⁰³ She lacked any of the required identification.

Because of the rural nature of most reservations in Arizona and the realities of life on the reservations, Native Americans like Ms. Laughter are

193. *Id.* ¶¶5–6. Arizona has three types of ballots for in-person voting: regular ballot, provisional ballot, and conditional provisional ballot. If an elector does not provide proper identification, the elector will receive a conditional provisional ballot. The individual has until 5:00 P.M. on the fifth business day following a “general election that includes an election for a federal office” or three business days for any other election to present proof of identification to the county recorder’s office. *See* Brewer, *supra* note 183.

194. *See* Second Aff. of Leila Help-Tulley, M.S.W. *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Aug. 30, 2006).

195. Brief for Nat’l Cong. of Am. Indians et al. as Amici Curiae Supporting Petitioners at 6, *Crawford v. Marion Cty Election Board*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25), 2007 WL 3440943.

196. *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297, at *17–21 (D. Ariz. Oct. 19, 2006) (deposition of Agnes Laughter).

197. Brief for Nat’l Cong. of Am. Indians et al. as Amici Curiae Supporting Petitioners at 7, *Crawford v. Marion Cty Election Board*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25), 2007 WL 3440943.

198. *Id.* at 10, 14.

199. *Id.*

200. *Id.* at 3–4.

201. *Id.* at 7.

202. *Id.* at 14.

203. Complaint at 12, *Navajo Nation v. Brewer*, No. 06-1575 (D. Ariz. Jun. 6, 2006).

less likely than other electors to have the other forms of identification listed in the Procedures.²⁰⁴ First, Native Americans living on the reservation do not receive property tax statements.²⁰⁵ Property tax statements are not issued to tribal members living on Indian reservations. Second, Native Americans are less likely to have utility bills than other Arizona electors.²⁰⁶ According to the 2000 Census, 33% of the housing units on the Navajo Reservation lack complete plumbing, 62% lack telephone service, over 56% of Navajo households are heated by wood, and traditional Navajos living in hogans do not have electricity and do not receive utility bills.²⁰⁷ Even if a household has a utility bill, that bill will be issued in only one person's name. Third, Native Americans are less likely than other Arizona residents to have a vehicle insurance card or an Arizona vehicle registration card.²⁰⁸ Fourth, Native Americans with bank accounts are unlikely to use their private banking information as a form of identification.²⁰⁹ Fifth, most Navajos do not have tribal identification cards or census cards that contain an individual's name and address.²¹⁰ The Navajo Nation did not issue tribal identification cards.²¹¹ Tribal and federal Certificates of Indian Blood contain only the individual's name and census number.²¹² Some census numbers are provided only on coins and do not include an individual's name.²¹³

In 2006, the Navajo Nation and Agnes Laughter filed a lawsuit seeking to enjoin the voter ID law, claiming that the law violated Section 2 of the Voting Rights Act, the Civil Rights Act, and denied Navajo voters equal

204. *Id.* at 23.

205. Supplemental Brief of Petitioner at 4, *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Sept. 11, 2006), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MOTIONtoSupplementBriefRegardingVotingRightsActandCivilRightsActbyAgnesLaughter.pdf>.

206. *Id.*

207. *Id.*; Choudhary, *supra* note 190, at tbl.12.

208. Supplemental Brief of Petitioner at 4, *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Sept. 11, 2006), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MOTIONtoSupplementBriefRegardingVotingRightsActandCivilRightsActbyAgnesLaughter.pdf>.

209. *Id.*

210. *Id.*

211. *Id.* at 3; *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297, at *17–21 (D. Ariz. Oct. 19, 2006) (deposition of Agnes Laughter).

212. Supplemental Brief of Petitioner at 4, *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Sept. 11, 2006), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/MOTIONtoSupplementBriefRegardingVotingRightsActandCivilRightsActbyAgnesLaughter.pdf>.

213. *Id.*

protection.²¹⁴ The Inter Tribal Council of Arizona, comprised of 19 tribal nations, and other parties also filed a lawsuit to enjoin the voter ID law and the voter registration law implemented pursuant to Proposition 200. The court consolidated the actions.²¹⁵ Tribes were concerned with the disproportionate impact the new voter ID law has on reservation voters, specifically elderly limited English proficient voters. One day prior to the 2006 Primary Election, the court denied the motions for preliminary injunction based on equal protection violations, and voter ID requirements were imposed during the 2006 mid-term elections.²¹⁶ The court ordered a supplemental hearing in February 2007 on the Navajo Nation and Agnes Laughter's Voting Rights Act and Civil Rights Act claims as part of their motion for preliminary injunction.

The Arizona voter ID requirements disenfranchises Native American voters who, by their culture and circumstances, are less likely than other voters to have identification deemed acceptable by the State. Requiring Native American voters to provide voter identification is a continuation of Arizona's discriminatory practices. The voter ID law in Arizona resulted in a significant decrease in the number of Native Americans who voted during the 2006 elections.²¹⁷ During the 2006 election cycle, individuals were turned away from the polls if they did not have voter ID, not even allowed to cast a conditional provisional as required by law.²¹⁸ During the 2006 mid-term election, 428 Navajos living on the Navajo Reservation in Arizona completed conditional provisional ballots that were never verified with one of the statutory forms of ID, and, therefore, were never counted.²¹⁹ This means that at least 428 Navajos lacked ID to vote in the polls on Election Day. This number does not include individuals who did not fill out a provisional ballot because they knew they would not be able to return and produce the required identification or those who stayed home because they knew they could not meet the requirement.²²⁰ Some Navajo elders reported that they would not be

214. Complaint at 24, *Navajo Nation v. Brewer*, No. 06-1575 (D. Ariz. Jun. 6, 2006).

215. The consolidated case was *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Sept. 11, 2006).

216. Order Denying Preliminary Injunction at 8, *Gonzalez v. Arizona*, No. 08-17094 (9th Cir. Nov. 11, 2010), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Gonzalez-Order-11-11-10.pdf>.

217. Brief for the Navajo Nation et al. as Amici Curiae Supporting Respondents & Respondent-Intervenors at 33, *Shelby Cty. v. Holder*, 133 S.Ct. 2612 (2013) (No. 12-96) 2013 WL 432965.

218. See Agnes Laughter Grievance Election Form (Oct. 2, 2006).

219. Brief for Nat'l Cong. of Am. Indians et al. as Amici Curiae Supporting Petitioners at 8, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25).

220. *Id.* at 8 n.12.

voting in elections due to the voter ID requirements, and Election Day technicians in Coconino County, Arizona observed individuals who entered the polling place and walked out without voting during the 2006 Arizona Primary Election.²²¹

The timing to ensure that Indian voters who lacked the required ID could participate in the upcoming 2008 presidential election was limited. In May 2007, the court denied the Navajo Nation's motion for a preliminary injunction based on violations under the Voting Rights Act and Civil Rights Act, and the trial on the merits would not be held until July 2008, only a few months before the 2008 primary and presidential elections. It was unlikely that the judge would issue a ruling prior to the November General Election, and the State had already held its presidential primary.

The Supreme Court ruled in April 2008 that Indiana's voter ID requirement was permissible. In *Marion County v. Crawford*, the Supreme Court found that rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications.²²² It was debatable whether Arizona's voter ID law would suffer a similar fate. *Marion County* was a facial challenge to Indiana's election law requiring in-person voters to present government-issued photo ID. Unlike Arizona, no witnesses had yet been produced that would be impacted by the new law. The Supreme Court left open the possibility of an as-applied challenge. Further, the purpose of Arizona's law was not to protect voter integrity or to reduce fraud, it was to combat illegal immigration. Since non-citizens are not entitled to vote in Arizona, requiring ID to vote on Election Day does not seem to be a rational measure to combat illegal immigration. Since there was no evidence of voter fraud and the law was not proposed for that purpose, the State of Arizona could not claim that the voter ID law was an "evenhanded restriction[]" that protect[s] the integrity and reliability of the electoral process itself" as announced in *Anderson v. Celebrezze*.²²³

While it was possible that the voter ID claims might succeed, it was not likely that the Judge would rule prior to the 2008 presidential election. In May 2008, the Indian plaintiffs settled the voter ID lawsuit by expanding the types of documents that Indian voters can use for identification in advance of the presidential election.²²⁴ The revised Procedures for Proof of identification at the Polls expand the types of Tribal ID that can be used at the polls to include, but is not limited to:

221. *Id.*

222. 553 U.S. 181, 189–90 (2008).

223. 460 U.S. 780, 788 n.9 (1983).

224. *Navajo Nation v. Brewer*, No. 06-1575 (D. Ariz. May 27, 2008) (order approving settlement agreement and dismissal).

- a tribal identification or enrollment card issued under the authority of a federally recognized Indian tribe, nation, community, or band (“tribe”), a tribal subdivision or the Bureau of Indian Affairs; or
- a Certificate of Indian Blood issued to a tribal member under the authority of a tribe or by the Bureau of Indian Affairs; or
- a voter registration card for tribal elections issued under the authority of a tribe; or
- a home site assignment lease, permit or allotment issued under the authority of a tribe, tribal subdivision, or by the Bureau of Indian Affairs; or
- a grazing permit or allotment issued to a tribal member under the authority of a tribe, tribal subdivision, or by the Bureau of Indian Affairs.²²⁵

The revised procedures should make voting easier for tribal voters on Election Day so long as election administrators follow the law and train poll workers on the revised procedures. It also allows for tribes or local tribal subdivisions to issue ID on Election Day. Many counties and the Secretary of State fail to adequately advertise that there is a special Native American provisional and that there is an expansive list of Tribal IDs.²²⁶ In recent elections, voters were confused about the type of identification that they could use to vote on Election Day and did not know about the acceptable forms of Tribal ID. Further, many poll workers seemed unfamiliar with the types of ID allowable for Indian voters.²²⁷ There are still some voters who fail to meet the voter ID requirements.²²⁸ This can be either due to poorly trained poll workers, lack of information provided to voters about the ID requirements, or that voters simply do not have ID.

B. Language Access Issues

The language minority requirements of the Voting Rights Act are included in Section 203 and Section (4)(f)(4) of the Voting Rights Act. Native Americans are a protected class, and Native languages are also considered

^{225.} *Id.* at 1–2.

^{226.} The Secretary of State does not even list the special Native American provisional or the types of Tribal ID that voters can use on its website. *Voting in this Election*, ARIZ. SEC’Y OF STATE, <http://www.azsos.gov/elections/voting-election> (last visited Jan. 28, 2016).

^{227.} LAWYERS’ COMM. FOR CIVIL RIGHTS UNDER LAW, THE 2014 ELECTION PROTECTION REPORT x (2015), <http://www.866ourvote.org/newsroom/publications/body/2014-Election-Protection-Report-Executive-Summary.pdf>; Indian Legal Clinic, 2014 Arizona Native Vote, *supra* note 171, at 7.

^{228.} Indian Legal Clinic, 2012 Arizona Native Vote, *supra* note 171, at 24–31.

minority languages under the Voting Rights Act. Language minority provisions were adopted in 1975, and extended in 1982, 1992, and 2006. Congress adopted the language minority provisions because:

through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.²²⁹

The illiteracy rate for Arizona Indians is nineteen times the national illiteracy rate.²³⁰ The 2000 Census data reported that 21.4% of American Indians are limited English proficient.²³¹ Because many Indian languages in Arizona are oral and are not written,²³² the language minority provisions are necessary to ensure that Indians can effectively exercise their right to vote.²³³ Over one-third, 11,377 persons, of the Native American voting age population in Apache County was limited-English proficient.²³⁴ Under the language minority provisions, election officials in Arizona must provide “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” in the language of the applicable language minority group as well as in

229. 52 U.S.C. § 10503(a) (2006).

230. Arizona has inadequate English as a Second Language and adult ELL courses to help bridge the language gap. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1367, 1379 (appendix to the statement of Wade Henderson).

231. *Id.* (many American Indian and Alaska Natives continue to speak in their tribal language and many do not speak English well).

232. *United States v. McKinley Cnty.*, 941 F. Supp. 1062, 1064 (D. N.M. 1996); *see also Continuing Need for Section 203's Provision for Limited English Proficient Voters*, *supra* note 2, at 498–99 (2006) (statement by Alfred Yazzie).

233. *Voting Rights Act: Section 203—Bilingual Election Requirements (Part I): Hearing Before the Subcomm. on the Constitution of the H. Comm. On the Judiciary*, 109th Cong. 10 (2006) (testimony of Bradley Schlozman).

234. *2006 Voting Rights Act: Sections 6 and 8—The Federal Examiner and Observer Program*, *supra* note 132, at 14 (statement of Penny Pew).

English.²³⁵ Arizona must provide election materials in both English and Spanish statewide.

Attempts to limit government business to English-only is a threat to Indian voters' participation in the political process. In 1998, the Arizona Supreme Court struck down an amendment to the Arizona Constitution, Article XXVIII, enacted by the Arizona voters in November 1988 requiring that all government business be conducted in "English and no other language."²³⁶ This would have impeded the ability of Navajo elected officials to meet and discuss issues with their non-English speaking constituents.

A legislative report prepared in support of renewing the language provisions of the Voting Rights Act found that Native language speakers experience hardships when attempting to vote, because of their limited ability to speak English and inability to read the ballots.²³⁷ Congressional testimony highlighted the many Indians, especially elders, who "speak English only as a second language."²³⁸ The minority language protections require that covered jurisdictions provide assistance to Indian voters who may have little or no formal education and who may speak English only as a second language. The right to language translations is important for Indians to have equal access to the ballot box.²³⁹

Nine Arizona counties are covered under Section 203 for American Indian languages: Apache, Coconino, Maricopa, Mohave, Navajo, Pima, Pinal, Yavapai, and Yuma and must provide all election materials, including assistance and ballots, in the language of the applicable language minority group. Of these counties, four—Navajo, Apache, Coconino and Pinal—were covered under Section 5 and were required to have all materials and procedures precleared.²⁴⁰ Pursuant to Section 203 of the Voting Rights Act,

235. Covered jurisdictions are determined after each census based upon a formula established in the Voting Rights Act. 52 U.S.C. § 10503(c) (2006).

236. *Ruiz v. Hull*, 957 P.2d 984, 996 (Ariz. 1998); *see also* *Yniguez v. Mofford*, 730 F. Supp. 309, 314 (D. Ariz. 1990) *aff'd in part, rev'd in part*, 939 F.2d 727 (9th Cir. 1991), *vacated and remanded by* *Arizonans for Official English et al. v. Arizona*, 520 U.S. 43 (1997) (under the constitutional amendment, Native American state legislators would be violating "their sworn oaths to obey the state constitution, and thereby subject themselves to potential sanctions and private suits," if they spoke to their constituents in their native languages).

237. H.R. REP. NO. 109-478, at 45–46 (2006).

238. *Id.* at 49; *Continuing Need for Section 203's Provision for Limited English Proficient Voters*, *supra* note 2, at 309 (letter by Joe Garcia, Nat'l Cong. of Am. Indians).

239. *Continuing Need for Section 203's Provision for Limited English Proficient Voters*, *supra* note 2, at 310 (letter by Joe Garcia, Nat'l Cong. of Am. Indians).

240. *See* Voting Rights Act Amendments of 2006, Determinations under Section 203, 76 Fed. Reg. 63602, 63603 (Oct. 13, 2011), http://www.justice.gov/sites/default/files/crt/legacy/2011/10/13/2011_notice.pdf.

language assistance must be provided in tribal languages in the following jurisdictions:²⁴¹

Apache County*	Apache, Navajo, Zuni
Coconino County*	Havasupai, Hopi, Navajo
Gila County	Apache
Graham County	Apache
Maricopa County	Pima, Yavapai
Navajo County*	Apache, Hopi, Navajo
Pima County	Pima
Pinal County*	Apache, Pima
Yuma County	Delta River Yuma, Yuma

Unlike Spanish, many Native languages in Arizona are unwritten/oral languages. Oral assistance must be provided to those voters who lack English proficiency.

Language minority provisions have increased opportunities for Indian voters, when the law is followed. Even though Navajo and Apache Counties agreed to establish minority language programs to better assist Indian voters pursuant to consent decrees,²⁴² the Department of Justice identified situations in which ineffective language assistance was offered to Indian voters in Apache County, Arizona.²⁴³ A Department of Justice consultant testified before Congress about how lack of language assistance precludes Indian voters from casting meaningful ballots.²⁴⁴ The federal observer program helped to reveal deficiencies and problems complying with the minority language provisions.²⁴⁵ When federal observers are not present, officials fail

241. *Counties with an asterisk were also covered under Section 4(f) of the Voting Rights Act which subjected the jurisdiction to the Preclearance Provisions of Section 5 of the Voting Rights Act.

242. *United States v. Arizona*, No. 88-1989 (D. Ariz. May 22, 1989, amended Sept. 7, 1993) (consent decree); *Voting Rights Act: Section 203—Bilingual Election Requirements (Part I)*, *supra* note 233, at 99 (appendix to the statement of Bradley J. Schlozman).

243. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1367 (appendix to the statement of Wade Henderson).

244. Brief for Nat'l Cong. of Am. Indians et al. as Amici Curiae Supporting Petitioners at 36, *Crawford v. Marion Cty Election Board*, 553 U.S. 181 (2008) (Nos. 07-21, 07-25), 2007 WL 3440943.

245. *Continuing Need for Section 203's Provision for Limited English Proficient Voters*, *supra* note 2, at 414, 492, 500 (statement of Alfred Yazzie).

to post the required notices at polls, incorrectly translate ballots, rush voters who are casting ballots, and fail to make assistance available to voters.²⁴⁶

The Navajo Nation Election Administration reviews and approves all Navajo language translations used by Apache, Coconino, and Navajo Counties for use on reservation precincts. The translations include radio and print announcements, ballots, audio tapes, other election material, and poll working training materials. However, many times this material is not completed in time for early voting. Further, since many Indian voters do not speak the English language, access for Indian voters is limited to in-person voting. Because of the practical realities of life on the reservation, most Native American speakers do not have the same access to early voting, subjecting them to the heightened ID requirements.

C. Early Voting Opportunities

The Arizona voter ID requirement applies only to electors voting in person on Election Day. No similar voter ID procedures are required by electors voting by mail. Proposition 200 did not amend the process for voters to obtain an early ballot or to cast an early ballot. To obtain an early ballot, the elector must make a verbal or signed request to the county recorder or other officer in charge for an official early ballot.²⁴⁷ The elector shall provide his/her name, address, date of birth, county or state of birth, or other information to confirm the elector's identity. The elector must sign an affidavit on the ballot envelope swearing that he/she is the individual casting the ballot.²⁴⁸ Early votes are counted pursuant to signature verification.²⁴⁹

Arizona Indian voters do not participate in early voting at high levels, and reservation voters have less opportunities than off-reservation voters to cast an early ballot. While the task of downloading a registration form from the internet, printing it out, completing it, and mailing it to the county recorder is simple for the majority of Arizona citizens, this is not the case for Indians, many of who do not even have access to internet.²⁵⁰ Indian Country lacks the basic infrastructure necessary to make early voting by

246. *Id.* at 500–01.

247. ARIZ. REV. STAT. ANN. § 16-542 (2015).

248. *Id.* § 16-547 (2011).

249. *Id.* § 16-550 (2007).

250. Not only are Indian tribes physically isolated, they are technologically isolated as well. The Federal Communication Center's National Broadband Plan includes some key findings regarding telecommunications services on tribal lands. See *Native Nations*, NATIONAL BROADBAND MAP (June 30, 2014), <http://www.broadbandmap.gov/summarize/native-nations>.

mail work for Indian voters. Voters like Ms. Laughter lack internet, phone, and do not receive mail at their home. Further, elders such as Ms. Laughter need and have a right to language assistance to request and complete the ballot. Coconino County illustrates the major differences in on and off reservation voters. In the 2004 General Election, 64% of the electors living in non-reservation precincts voted at the polls, while 91% of electors living in reservation precincts voted at the polls.²⁵¹ This means that only 9% of reservation voters participated in early voting, while 46% of off-reservation voters cast an early ballot.

While voters can also complete an early ballot in person, most early voting locations are located off-reservation, requiring a great distance to travel, as well as transportation.²⁵² Polling locations and voter registration sites on reservations are often located at substantially greater distances from voters, than sites located off reservation.²⁵³ Further distances means a greater cost incurred to exercise one's vote.²⁵⁴ Registering to vote is also an obstacle as a majority of counties bordering reservations limit registration locations to off-reservation towns.²⁵⁵ The ability to travel assumes that tribal members have access to cars or public transportation, which is not always the case. The census indicates that American Indians are twice as likely to have no vehicle available to them and there are not public transportation systems available to most Indians.²⁵⁶ Making early voting available at the county seat, while not providing Indians living on the reservation with the same access to early voting sites, has the practical effect of providing more voting resources to one community than another, or—more specifically—valuing the non-Indian vote over the Indian vote.

Indian voters are not afforded the same opportunity to vote by early ballot as non-Indian voters. While the discriminatory impact may be unintentional, non-Indian voters have a greater opportunity to avail themselves of the less

251. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1380, 1411–12 (appendix to the statement of Wade Henderson).

252. The lack of transportation compounds the problem and results in less opportunity for Native Americans to participate in early voting. *See* Tucker et al., *supra* note 84, at 293.

253. *Voting Rights Act: Evidence of Continued Need*, *supra* note 106, at 1411–12 (appendix to the statement of Wade Henderson).

254. *Id.*

255. *Id.*

256. “The 2000 [C]ensus indicates that American Indians are twice as likely to have no vehicle available to them—14%, compared with 7% in the general population—and only about 6% of tribes have a public transportation system.” Brief for Nat’l Cong. of Am. Indians as Amicus Curiae, *Wandering Medicine v. McCulloch*, 2013 WL 1452761, at *11 (9th Cir. 2013) (citing BUREAU OF INDIAN AFFAIRS, TRANSPORTATION SERVING NATIVE AMERICAN LANDS: TEA-21 REAUTHORIZATION RESOURCE PAPER (2003)).

burdensome early voting process. To create heightened requirements for those voters who vote in person on Election Day than for those voters who participate in early voting in and of itself is a discriminatory practice. A federal court in Louisiana found absentee ballot practices discriminatory when African Americans were not provided the same opportunities to vote by early ballot as white individuals.²⁵⁷ In *Brown*, the court held that making absentee ballots available to white individuals in their private residences without extending the same opportunity to African American residents constituted unlawful discrimination, however unintentionally this result may have come about.²⁵⁸

IV. STRATEGIES TO PROTECT THE INDIAN VOTE

The United States Supreme Court has recognized that “[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.”²⁵⁹ A review of the history of Native American voting rights in Arizona, coupled with the continued changes in voting practices which hinder the opportunity of Native American voters to effectively participate in federal and state elections, enables us to understand the importance of taking proactive measures to protect Native American voting rights in Arizona. Recent legislation to require identification at the polls significantly undermines the advances achieved by Native Americans to secure the right to vote. With the removal of Section 5 preclearance, tribes need to be vigilant to protect the Indian vote. However, litigation to enforce voting rights is not a sufficient alternative to Section 5 coverage. Litigation is not quick, easy, or cost-efficient. Tribes cannot afford to challenge every law that impacts Indian voting rights.²⁶⁰ Therefore, nonlitigation strategies should be developed to protect the Indian vote. One successful strategy recently occurred when Arizona tribes participated in the 2010 redistricting process, creating a robust Native American majority-minority legislative district that includes eight Indian reservations and has a Native American population of 66.9%.²⁶¹

257. *Brown v. Post*, 279 F. Supp. 60, 64 (W.D. La. 1968).

258. *Id.*

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

260. *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 715 (2005) (statement of O.J. Semans).

261. See ARIZ. INDEP. REDISTRICTING COMM., *State of Arizona Legislative Redistricting Plan* 41 (Feb. 28, 2012), <https://web.law.asu.edu/Portals/30/Files/2012-02-28%20State%20of%20Arizona%20Legislative%20Redistricting%20Plan%20Submission.PDF>.

The goal of ensuring Indian voter participation requires a multi-layered approach. This section will discuss two strategies—election protection and early voting. The key to success using either strategy is coordination with county and state officials. First, there needs to be more resources dedicated to election protection so that Indian voters' rights are protected. There also needs to be recognition of the problems that exist and a willingness by county and state officials to address them. Second, counties should provide more access to early voting. Further, when voter inequities are identified, tribal leadership should meet with county, state and federal officials to address concerns. While litigation is costly, Tribes should request DOJ to intervene and evaluate potential litigation if tribal rights are violated.

A. Arizona Native Vote Election Protection Project

This subsection will focus on the use of the Native Vote Election Protection Project to help document and address Indian voting issues, and other recommendations from data obtained through the project. One of the most important tools for voters is having a voice when they are denied the opportunity to vote. Filing a complaint after the election under the Help America Vote Act, does not provide a remedy to the voter the day of the election. The Arizona Native Vote Election Protection Project seeks to protect voter rights in real time during elections.

The Arizona Native Vote Election Protection Project was developed in 2008 after a meeting between the Inter Tribal Council of Arizona, the Arizona Indian Gaming Association, and the Indian Legal Clinic at the Arizona State University Sandra Day O'Connor College of Law to discuss voter disparities in Indian Country as a result of the 2004 voter identification law. Past attempts at voter protection efforts were uncoordinated, and national election protection organizations and state political parties had not and were not planning on providing assistance to Arizona's reservation voters. The group decided that Arizona tribes would be better served by a coordinated effort with a specific hotline for Arizona Indian voters as opposed to using a national hotline. The Indian Legal Clinic drafted a voter protection plan based on those discussions. The plan included stationing trained volunteers at polls where voting irregularities previously had been reported, having in-house tribal counsel serve as on-call volunteers, and creating or hosting a hotline staffed by knowledgeable attorneys to answer on-the-spot challenges to individuals trying to vote. The Clinic recruited Arizona State University

The Indian Legal Clinic at the Sandra Day O'Connor College of Law created a redistricting guide for tribes and tribes participated in most, if not all, commission hearings.

Indian Legal Program alumni, students, and members of the Native American Bar Association of Arizona to serve as pro bono legal advisors in order to respond to Election Day disputes.

The objective of the Election Protection Project is to reduce the number of tribal members turned away from polling sites because of improper identification, language barriers, misinformation regarding voting laws, and voter intimidation tactics.²⁶² The Native Vote Election Protection Project was developed to ensure access to the polls and to prevent voter disenfranchisement. The project has three primary goals:

- Identify and address potential voter issues prior to Election Day.
- Train and maintain a dedicated and reliable network of volunteers to respond to voting incidents on Election Day in order to protect Native Americans from voter intimidation and disenfranchisement.
- Collect data illustrating voting obstacles.²⁶³

Since 2008, the Election Protection Project has documented incidents that have limited Indian voters' access to the ballot box. These incidents can be described in the following categories: registration, questionable poll judge behavior, blatant intimidation by police, misapplication of voter ID laws and procedures, long lines, and voting machine incidents. Based on the documentation of voter intimidation by the Native Vote Election Protection Project at the Guadalupe polling location in 2008 and 2010, the Department of Justice decided to monitor the Guadalupe polling location.²⁶⁴ The Project has assisted hundreds of voters to resolve voting issues on Election Day.

One of the issues documented by Native Vote is how address issues for reservation Indians have been used as an obstacle to voting. Prior to the 2004 voter ID law, voters were not required to show ID to vote, and poll workers were prohibited from asking for ID.²⁶⁵ On most Indian reservations in Arizona, an individual's "address" on a reservation is not specifically described by a street number, rural route number, lot and block or metes and bounds. Addresses typically describe the location of a residence by distance from a landmark, such as a Chapter House or mile post marker. The same

262. See *Arizona Native Vote Election Protection Project*, SANDRA DAY O'CONNOR COLLEGE OF LAW, <https://web.law.asu.edu/ilc/Admin/NativeVoteArizona.aspx> (last visited Jan. 28, 2016); *Election Protection*, NATIVE VOTE (2014), <http://www.nativevote.org/page/election-protection>.

263. Indian Legal Clinic, 2014 Arizona Native Vote, *supra* note 171, at 2.

264. Megan Cassidy, *DOJ to Monitor Primary Elections in Guadalupe*, ARIZ. REPUBLIC (Aug. 1 2014), <http://www.azcentral.com/story/news/local/tempe/2014/08/01/departments-of-justice-guadalupe-arpaio-abrk/13481557/?from=global&sessionKey=&autologin=>.

265. Ian Urbina, *Voter ID Battle Shifts to Proof of Citizenship*, N.Y. TIMES (May 12, 2008), http://www.nytimes.com/2008/05/12/us/politics/12vote.html?pagewanted=1&_r=0.

address can appear in several different formats that may make comparison difficult. Because of the rural nature of the most reservations, mail is not delivered to an individual's home address but to a post office box or trading post. If the individual cancels or does not renew his/her post office box, then the individual will not receive election mail sent by the counties. In the State of Arizona, a number of residents lack a driver's license; and even though a Native American may have an Arizona driver's license or operating card, the address may not be correct. If an individual seeks to change his/her address with the Department of Motor Vehicles, an individual must pay a fee in order to obtain a new card. While the identification documents acceptable at the polls may be commonly held by non-Indian voters, Native Americans do not commonly have these alternative documents.

In 2012, voters were turned away at the polls because of address issues. Two specific examples uncovered by Native Vote demonstrate the disenfranchisement of validly qualified and registered voters. First, in Apache County, Native Vote learned that over 500 registered voters were placed on a "suspense list" because the County was not sure which precinct to assign them.²⁶⁶ Native Vote provided education on this issue to Indian voters, including public service announcements on KTNN, the Navajo Nation radio station. Election protection volunteers also encouraged voters to have poll workers check the suspense list if they were denied a ballot. Poll workers should be trained on these issues, and efforts should be made by Apache County to work with Navajo Nation officials to ensure that voters are placed in the correct polling precinct so that they are not removed from the voter rolls.

Second, in Pinal County, reservation voters were assigned the address of their voting precinct on the voting roster—the tribal district service center, further compounding the voter ID problem.²⁶⁷ According to Arizona law, the signature roster must include both the physical and mailing addresses if they are different.²⁶⁸ The residence address is required to place voters in a polling

266. Aura Bogado, *Democracy in "Suspense": Why Arizona's Native Voters are in Peril*, THE NATION (Oct. 18, 2012), <http://www.thenation.com/article/democracy-suspense-why-arizonas-native-voters-are-peril/>.

267. Letter from Michelle Forney, Elections Director, Pinal County, to Maria Peralta (Sept. 1, 2015) (on file with author); Correspondence from Rachel Silvas Chief Registrar, Pinal County, to author (Oct. 30, 2014) (on file with author).

268. When a person registers to vote, the applicant must include the residence address and a mailing address, if different from the residence address, including a post office address, city or town, zip code or other designation used by the registrant for receiving mail. ARIZ. REV. STAT. ANN. § 16-152(A) (2011). This information is used to create the signature rosters. ARIZ. REV. STAT. ANN. § 16-168(B) (2012). According to the Secretary of State's Election Manual, both the

precinct, and the mailing address is used to send official election mail. However, when the mailing address and residence address are different, both should be included on the signature roster. This is especially important in Arizona Indian Country because many reservations do not receive mail at home but may have the residence address on the driver's license or identification. Despite voters who submitted a residential address or residential address description when registering to vote, Pinal County replaced this address with the tribal district service center.²⁶⁹ No voters would list the district service center as their residential address on any ID. In 2012, this resulted in qualified voters being turned away or required to vote provisional ballots in Pinal County.²⁷⁰

Address issues result in voters either not voting, or filing provisional ballots. During a recent field hearing held by the National Commission on Voting Rights, Gregory Mendoza, former Governor of the Gila River Indian Community testified about the overuse of or confusion about when to offer provisional ballots and the address challenges for tribal members.²⁷¹

County officials have discretion to train poll workers to either disenfranchise or empower voters through address acceptance or manipulation. In Coconino County, for example, at least one-third of voters lack situs descriptions. Notwithstanding, the county trains pollworkers to accept any ID that reasonably matches the voter rolls.²⁷² Similarly, other counties should not deny tribal voters a regular ballot because the county replaced the voter's residential address with the district service center address. Counties should be required to review their voter rolls and correct the inaccuracies. Further, poll workers need to be trained to not turn voters away, because all voters are entitled to at least a provisional ballot under the

mailing address and residence address should be on the signature roster. ARIZ. SEC'Y OF STATE, ELECTION PROCEDURES MANUAL 153 (2014), https://www.azsos.gov/sites/azsos.gov/files/election_procedure_manual_2014.pdf.

269. In 2014, the author reviewed the VAN and noted that all voters in Gila River Indian Community Reservation Precincts were listed as having the relevant district service center as their residential address.

270. Indian Legal Clinic, 2012 Arizona Native Vote, *supra* note 171, at 7–8; Indian Legal Clinic, 2014 Arizona Native Vote, *supra* note 171, at 4–5.

271. Tova Wang & Maria Peralta, *Improving Elections in the United States: Voices from the Field*, NAT'L COMMISSION ON VOTING RIGHTS 36, 66 (Sept. 22, 2015), <http://votingrightstoday.org/ncvr/resources/electionadmin>.

272. Conversation between Coconino County Recorder and author (Dec. 10, 2015) (notes on file with author); *see* ARIZ. SEC'Y OF STATE, *supra* note 268, at 153.

Help America Vote Act.²⁷³ The Arizona Native Vote Election Protection Project has developed a plan and is working with its partners to resolve the address disparity issue prior to the 2016 General Election.

One option to consider for voters who face address issues is same-day voter registration. Same-day voter registration would alleviate address and voter registration issues.²⁷⁴ Same-day voter registration in Arizona would allow those who have moved or whose addresses do not match the voting rosters to be able to re-register on Election Day and vote that same day.

Election Protection has helped to uncover problems faced by Indian voters. To improve Election Protection, Arizona law should be changed to allow for nonpartisan volunteers to be stationed inside the polls. Currently, Arizona law limits access inside the polls to political observers/challengers for partisan elections.²⁷⁵ Election Protection could be improved by allowing nonpartisan election protection volunteers to be located inside the polls in order to fully document and identify voting issues.

B. *Equal Access to Early Voting*

Another strategy to improve access to the ballot box for Native Americans is to provide equal access to early voting for reservation voters. With voter ID requirements in place for in-person voting, electors without ID or only one form of tribal ID must complete a provisional or conditional provision ballot. An elector without the required ID may cast a conditional provisional ballot, but that ballot will not be counted unless the elector returns within three or five days with identification. Returning to the County Recorder to provide identification is not possible for many Indian voters who lack transportation, resources, and identification.²⁷⁶ This process denies the voting rights of Native American electors.²⁷⁷ Given the social and historical conditions faced by Indian voters, and the impact of voter ID on Indian voters, there are certain

273. Under the Help America Vote Act, a person who affirms that he is a registered voter and is eligible to vote in the election, must be given a provisional ballot. H.R. 3295, 107th Cong. § 302(a) (2002).

274. According to the National Conference of State Legislatures, eleven states have implemented same-day registration, and another three have enacted legislation. *Same Day Voter Registration*, NAT'L CONF. ST. LEGISLATURES (June 2, 2015), <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>.

275. ARIZ. REV. STAT. ANN. § 16-590 (1996).

276. Testimony of Leonard Gorman, Prel. Inj. Tr. 56, 66–68, *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Aug. 30, 2006); Second Aff. of Leila Help-Tulley, M.S.W., *Gonzalez v. Arizona*, No. 06-1268, 2006 WL 3627297 (D. Ariz. Aug. 30, 2006).

277. See *Thompson v. Willson*, 155 S.E.2d 401, 404 (Ga. 1967) (“A refusal to count [an elector’s] vote completely ignores it and is tantamount to a refusal to allow him to cast it.”).

strategies that could assist in ensuring that Indian voters continue to participate in voting and that their ballots are counted.²⁷⁸

One option to overcome the voter ID obstacle is to request counties to establish early voting locations on Indian reservations so that Indian voters have equal access to the polls. Arizona law allows counties to establish on-site early voting locations if “deemed necessary or appropriate.”²⁷⁹ Persons who can and do participate in early voting are not required to present ID, only their signature. Persons voting at the polls, must provide a signature and either one form of identification or two forms of identification in order to vote. Native American voters directly impacted by the voter ID law do not currently have the same access to early voting as their off-reservation neighbors. Early voting would be a step forward in providing equal access to the polls. Tribes could work with local county officials to provide early voting locations for this purpose.

The problem with the voter ID law is that it places greater burdens on certain types of voters. Early voters only have to provide their signature. Another option to overcome the voter ID obstacle is to remove the inequity of signature verification by allowing voters who lack ID on Election Day to have their ballots processed through signature match. Counties can easily verify ballots of voters who lack ID through a signature match, the same way in which early ballots are verified. If the goal of Proposition 200 is to reduce illegal immigration, verifying a person’s signature would not thwart the intent of Proposition 200. If the goal of Proposition 200, however, is to prevent qualified voters from casting a ballot, enforcing the voter ID law through the use of conditional provisional ballots will achieve that result.

If counties do not provide sufficient access to early voting or some other alternative means of voting, and Native Americans continue to be disproportionately impacted by the application of voter ID laws, Indian voters may consider filing a vote denial claim under Section 2 of the Voting Rights Act. Tribal citizens could claim that the lack of early voting opportunities “interacts with surrounding racial discrimination in a meaningful way” to disproportionately impact Native American voters.²⁸⁰

278. *Farrakhan v. Washington*, 338 F.3d 1009, 1018 (9th Cir. 2003); *Ortiz v. City of Philadelphia*, 28 F.3d 306, 310–16 (3d Cir. 1994) (recognizing that Section 2 violations occur when challenged voting practices interact with social and historical conditions to deny minorities equal access to the political process).

279. ARIZ. REV. STAT. ANN. § 16-246 (2011).

280. See Brief for Nat’l Cong. of Am. Indians as Amicus Curiae, *Wandering Medicine v. McCulloch*, 2013 WL 1452761, at *16-19 (9th Cir. 2013); *Farrakhan*, 338 F. 3d at 1016.

V. CONCLUSION

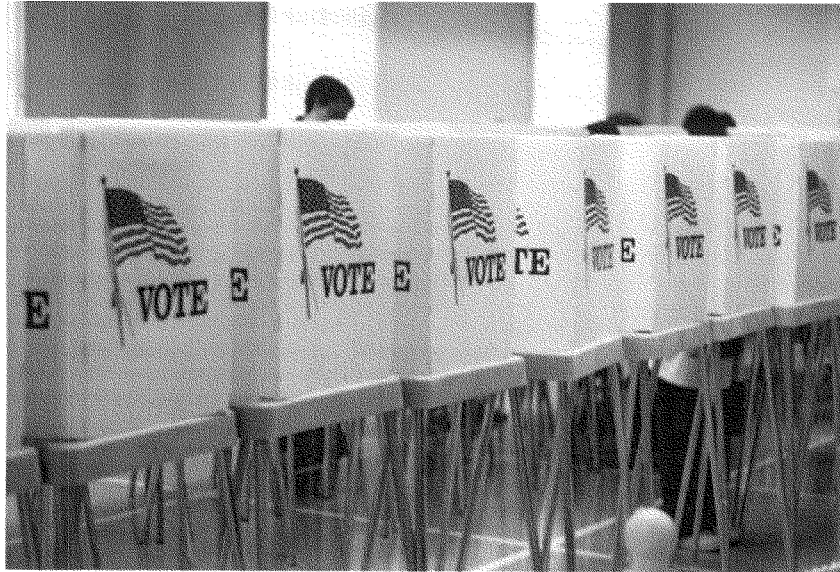
Although Arizona's indigenous people have a right to maintain their separate governance systems, they also have a right to fully participate in the electorate of the state and federal governments. Arizona Indians have fought not only for the rights to maintain and protect their respective cultures and traditions, they have also fought to protect the freedoms embodied through our representative democracy. Despite their sacrifices, Arizona Indians were denied the right to vote for half a century after they received citizenship. The road to full participation in the electoral process has been long, with roadblocks, detours, and speedbumps. There is still work to be done to ensure equal access for Indian voters.

The Native American vote does make a difference. Without a vote, Native people lack a voice in local, state, and federal politics. These policies impact tribal life. History teaches us that tribes and tribal advocacy groups need to stay vigilant so that Indian voters are protected. This includes educating tribal citizens on voting changes and voting laws and being proactive. Tribes should continue to work together to combat the processes that may impede the right of Native Americans to participate effectively in the electoral process. This includes assigning tribal attorneys to participate in the Native Vote Election Protection Project. Election Protection has been an effective tool in uncovering problems faced by Indian voters. Election Protection data and reports should continue to be used to resolve voting issues in between major elections.

Tribes and tribal advocacy groups should work with officials to advocate for changes to the law and processes that will improve voting not only for Indians, but for all Arizonans. If tribes are unsuccessful in convincing local, state, and federal authorities to provide equal access to the polls and to protect Indian voting rights, litigation is still an option. While Section 2 is not an optimal route given the expense and time, without Section 5 protections, it may be required. This is all the more reason why tribes need to keep a watchful eye to ensure that voting changes are not made that will impede the right to vote.

Arizona Shelby Response Project:

Modernizing Elections and Maximizing Voter Participation



A Collaborative Effort by
Arizona Advocacy Foundation, One Arizona and the Inter Tribal Council of Arizona

Sam Wercinski - Project Manager
Jonathan Alanis and Travis Lane - Project Coordinators
Chris Brill -Lead Researcher
Robbie Sherwood – Report Editor

3117 N. 16th Street, Ste. 120 * Phoenix, AZ 85016 * 602-297-2500

Table of Contents

Introduction	1
Transparency, Voting and Ballot Access	2
The Origins of Arizona's Voting Barriers: Prop 200 and Arizona's Bifurcated System	4
Barriers to Voting in Arizona	
Provisional Voting	6
Early Voting	9
Who is most likely to have a ballot rejected?	11
Interstate Crosscheck and the cancellation of voter records	14
Election Administration	17
Next Steps: Protecting the right to vote and the right to know	17
Appendix: Analysis of the Arizona Shelby Response Election Day Survey	22

Introduction

Thousands of votes from registered Arizona voters were not counted in the 2014 November general election. The votes of tens of thousands more have been discarded in previous elections. These invalidated votes would have been enough to sway several close races.

When it comes to disenfranchising eligible voters, Arizona is, unfortunately, a national leader. These discarded votes were not the result of fraud, which is so extremely rare it borders on non-existent. These were eligible voters – sometimes confused, sometimes misinformed or merely forgetful, sometimes willfully targeted because they share a common last name. Tens of thousands have lost their franchise in past elections for a variety of technical – and easily reformed – reasons. The populations most impacted have a disturbing commonality. Younger, minority voters are vastly over-represented among those whose votes have been invalidated.

This does not need to happen in Arizona.

The Arizona Shelby Response Project is an in-depth study, taking place in several states in the wake of the United States Supreme Court case *Shelby v. Holder* that invalidated Section 5 of the Voting Rights Act. The research presents an opportunity to improve access to elections for Arizona voters and to work with other states to modernize the Voting Rights Act. This report presents the result of our analysis of the 2014 Arizona election. We expose flaws in the state's election system – policies, procedures and laws -- that have invalidated tens of thousands of votes from registered, eligible voters. The project also makes concrete recommendations to correct these flaws. Researchers and volunteers for this project conducted hundreds of interviews with voters across the state on election day, obtained and analyzed volumes of public records and voter data after the election, and conducted records searches and interviews with county elections officials.

Key findings include:

- Over 30,000 eligible citizens have been denied the right to register to vote and receive a full ballot since 2005.¹
- Since 2006, over 46,000 mail-in ballots cast in statewide general elections have been rejected.²
- More than 6,500 ballots cast in person have been rejected since 2006 because voters arrived at poll locations with unacceptable forms of identification.³
- Arizona's costly policy and legally suspect bifurcated voting system discouraged nearly 2,000 voters from participating in the 2014 election. A mere 125 federal only ballots were cast⁴ at an estimated cost of over \$500,000⁵.

¹ http://www.maldef.org/voting_rights/litigation/az_prop_200

² U.S. Election Assistance Commission Election Administration and Voting Survey: 2006-2012.

http://www.eac.gov/research/election_administration_and_voting_survey.aspx

³ *Id.*

⁴ Arizona voter file, multiple data files and counts received from county recorder's offices.

⁵ Knochel, Andrew: "Counties: At Least 1,400 affected by AG ruling on voting/citizenship proof" (Cronkite News, Oct 9 2013) <http://cronkitenewsonline.com/2013/10/counties-at-least-1400-affected-by-ag-ruling-on-votingcitizenship-proof/>

- Since 2006, over 121,000 provisional ballots have been rejected, and elections officials are not resolving this problem.⁶ Despite record low turnout in 2014, the percentage of provisional ballots cast remained the same as in 2010. Without better training of elections workers and educational outreach to voters, Arizona's unusually high numbers of provisional ballots will likely persist in the 2016 presidential election.
- The controversial and poorly designed Interstate Crosscheck program that is designed to scrub duplicate voters from the rolls is inconsistently applied, removing eligible registered Arizona voters and causing confusion at the polls.
- As more votes are cast by mail, ballot signature issues create a new barrier for voters. In 2014, at least 5,462 early ballots were not counted because of signature issues. In 2012, the last presidential election, 7,307 early ballots had a signature issue and were not counted.⁷

Transparency, Voting and Ballot Access

In 2014, only 34 percent of eligible adults in Arizona cast a ballot. As of November 2014, an estimated 1,271,000 eligible citizens were not registered to vote in the state.⁸

Among those who do try to vote, many are disqualified. As Chart 1 shows, Arizona laws and policies have prevented elections officials from counting tens of thousands of ballots over the previous 5 election cycles. Trumped-up fears of voter fraud have led to unnecessary restrictions and paperwork requirements that prevent thousands more from registering to vote. In a recent study conducted by the Arizona Republic, between 2005 and 2012, there were only 34 judicial cases in Arizona related to voter fraud.⁹ The state wastes tens of thousands of dollars and blocks eligible voters in pursuit of a fictitious problem that appears to be designed for political electioneering and gain.

⁶U.S. Election Assistance Commission Election Administration and Voting Survey: 2006-2012.
http://www.eac.gov/research/election_administration_and_voting_survey.aspx

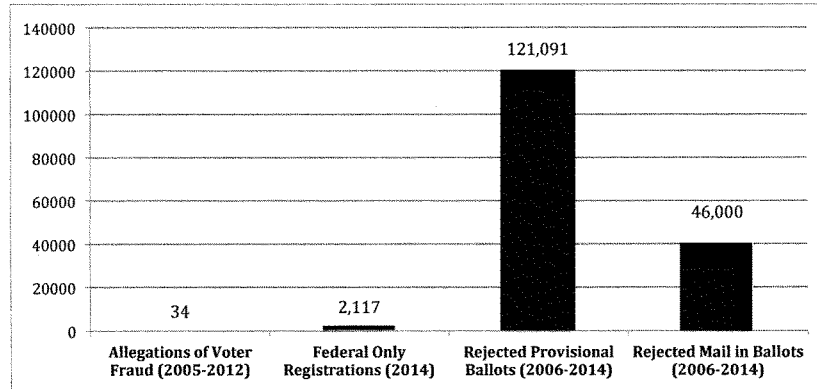
⁷ U.S. Election Assistance Commission: 2012 Election Administration and Voting Survey. A Summary of Key Findings, September 2013. Pg. 41 http://www.eac.gov/assets/1/1/990-050%20EAC%20VoterSurvey_508Compliant.pdf

⁸ McDonald, Michael "2014 November General Election Turnout Tables " United States Election Project. Retrieved from <http://www.electproject.org/2014g>

⁹ Rau, Beard Alia "Illegal immigrant vote-fraud cases rare in Arizona". (Arizona Republic- November 18th 2013)
http://www.azcentral.com/news/politics/articles/20131105arizona-immigrant-vote-fraud-rare.html?nclink_check=1

Chart 1: Rejected Ballots and Federal Only Registrations

Number of Federal only voter registrations and rejected mail in ballots and provisional ballots since 2006



Lawmakers and election officials implement these roadblocks in an attempt to thwart “voter fraud” and to preserve the “integrity of our elections” -- catch phrases and messaging that have been relentlessly pushed to convince the general population and the media that a non-existent problem is real. The resulting policy reactions -- measures like voter identification and citizenship verification -- disenfranchise far more eligible than non-eligible citizens.

As these restrictive measures are put into place, the consequences begin to take shape. They include:

- Citizens who can’t register to vote because they can’t locate a birth certificate.
- Students and other disadvantaged populations who have difficulty obtaining the required paperwork to register and face difficulty in voting.
- Statutes and procedures that allow thousands of provisional ballots and early ballots to be discarded by elections authorities.

Arizona elections authorities toss out provisional ballots and early ballots by the tens of thousands, not because of a suspicion of fraud, but for mundane reasons, such as the ballot arrived too late in the mail, or a subjective determination that the signature on an envelope didn’t match the voter’s signature on file. Voters showing up to the wrong precinct are often given a provisional ballot rather than directions to their proper voting location, but their failure to vote in the right location disqualifies their ballots.

This report begins with a discussion of Proposition 200 and the creation and implementation of Arizona’s bifurcated voting system, which has blocked certain voters from participating in local elections. It then covers statistics surrounding provisional ballot and early ballot rejection rates, and the effect these are having on elections. We turn then to Arizona’s participation in the Interstate Crosscheck program. Finally, we address inconsistencies in how election procedures are

implemented in each county. The report concludes by outlining a series of realistic common-sense solutions that can be implemented through procedural and policy changes.

The Origins of Arizona's Voting Barriers: Prop 200 and Arizona's Bifurcated System

The politics of immigration have fueled Arizona's push for roadblocks to voting. Politicians have used immigration to stoke fear in the voting public and to pass a series of restrictions on registering to vote and casting a ballot. In 2004, despite bi-partisan opposition among the state's leaders, Arizona voters passed Proposition 200, which was promoted and funded by out-of-state money from extreme rightwing groups. The measure, which attracted 56 percent of the vote, requires: a) proof of citizenship to register to vote, b) photo identification before receiving a ballot at the polling place, and c) verification of identity and eligibility for state benefits (to prevent unauthorized immigrants from receiving aid).¹⁰ Supporters of the proposition relied on specious arguments claiming that taxpayers were paying hundreds of millions of dollars annually to cover education, health care and incarceration costs of undocumented immigrants.

The first state election to implement these new procedures was in 2006. Multiple lawsuits and legal actions have been filed and adjudicated since. In April 2010 the Ninth Circuit Court of Appeals, citing inconsistency with the National Voter Registration Act of 1993 (NVRA), ruled that requiring citizenship verification to register to vote was invalid.¹¹ In April 2012, the *en banc* court came to the same conclusion, that the NVRA superseded Proposition 200's citizenship verification requirement¹². On July 11th 2012 the district court issued an order requiring that Arizona election officials accept the Federal form without its citizenship verification¹³.

In response, the state of Arizona requested that the U.S. Supreme Court review the decision of the Ninth Circuit, and that review was granted in October 2012. Finally, in 2013, the Supreme Court, in a 7-2 decision, affirmed the Ninth Circuit's ruling that Arizona's citizenship verification requirement was in conflict with the NVRA and that voters using the federal voter-registration form cannot be required to submit proof of citizenship¹⁴. However, that same ruling also allowed states to petition the Elections Assistance Commission (EAC) to change the federal form to conform to state requirements and to seek relief if their requests are denied.

Arizona, Georgia and Kansas subsequently petitioned the EAC to change the federal form and in early 2014, the EAC denied this request¹⁵. In response, Arizona has joined with the right-wing Secretary of State in Kansas to sue the EAC and force it to include a citizenship requirement on the federal voter registration form. Litigation is ongoing but in November 2014 the Tenth Circuit court held that the EAC does not need to include a state's citizenship requirement.

¹⁰ 2004 State of Arizona Official Canvass. Arizona Secretary of State <http://www.azsos.gov/election/2004/General/Canvass2004General.pdf>

¹¹ *Gonzales v. Arizona*, No. 08-17094, (9th Cir. Oct. 26, 2010) <http://lawprofessors.tvpepad.com/files/08-17094-arizonavotercitizenship.pdf>

¹² *Gonzales v. Arizona*, No. 08-17094 (en banc), (9th Cir. April 17, 2012) at 4148. <http://cdn.ca9.uscourts.gov/datastore/opinions/2012/04/17/08-17094.pdf>

¹³ Lawyer's Committee for Civil Rights: http://www.lawyerscommittee.org/projects/voting_rights/page?id=0020

¹⁴ *Arizona v. Inter Tribal Council of Arizona, Inc.*, No. 12-71 (opinion), (U.S. Supreme Court, June 17, 2013)

http://www.supremecourt.gov/opinions/12pdf/12-71_7148.pdf

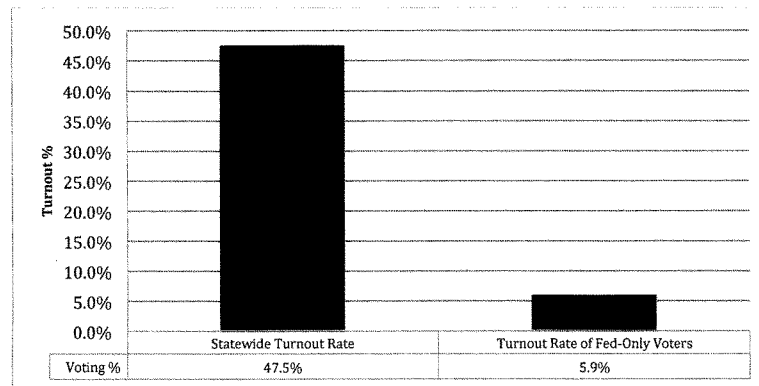
¹⁵ <https://www.brennancenter.org/sites/default/files/legal-work/129-1%20Memorandum%20of%20Decision.pdf>

In the meantime, the damage continues in Arizona. In 2013, after the U.S. Supreme Court's opinion, Arizona Attorney General Tom Horne issued an opinion that those registering to vote via the federal form could only vote in federal elections¹⁶. This incongruous reading of the law created a new roadblock. Otherwise-eligible citizens would now be labeled as "federal only" voters and allowed to vote in only federal elections. They are disenfranchised from voting in their state and local elections for failure to follow Arizona's stricter requirements.

This bifurcated system has sowed even more confusion and complexity into Arizona's voting procedures. **According to public records obtained by Shelby Response researchers, as of October 2014, there were approximately 2,117 federal-only eligible voters throughout the state, but only 125 of them voted in the 2014 general election.**

Chart 2: Federal Only Voter Turnout Rate

2014 General Election turnout rate of Federal-Only voters compared to total statewide turnout.



The 2014 election cycle was the first with the bifurcated voting system in place. With a presidential election in 2016, and with it increased voter registration, more citizens are likely to be prevented from voting in their state and local elections.

Unfortunately, these court opinions have continued to uphold Prop 200's voter ID requirement at the polls. The current Arizona policy for voters who arrive at their polling place without ID, is to require them to cast a 'conditional provisional' ballot, which will be invalidated if the voter does not present the appropriate ID to elections officials within five days of the election. **According to the U.S. Election Assistance Commission, between 2006 and 2012, at least 6,596 ballots were rejected by county recorders due to insufficient identification.**

¹⁶ Pitzl, Mary Jo "Arizona to have two-track voting system". (Arizona Republic, October 8th 2013)
<http://www.azcentral.com/news/politics/articles/20131007arizona-proposition-200-ballots-horne.html>

Provisional Voting

Since the introduction of the Help America Vote Act (HAVA), Arizona has been at or near the top of all states in the number of its votes cast by provisional ballot.¹⁷ Arizona voters are forced to vote a provisional ballot for a variety of reasons including:

- Insufficient voter identification
- Moving to a new precinct
- Moving to a new address
- Previously requesting an early ballot.

Arizona has also been near tops in the nation when it comes to the number of provisional ballots that are rejected. Despite media reports touting an “improvement” in the number of provisional ballots cast in Arizona in 2014,¹⁸ in reality the situation has changed very little. While the number of provisional ballots cast in 2014 went down, that occurred only because the voter turnout was much lower during this non-presidential election year.

A more relevant comparison is to the most recent mid-term election in 2010. In that election approximately 81,844 provisional ballots were cast statewide, or 3.8 percent of the total vote.²⁰ Almost the same percentage (3.7 percent) of the total vote was via provisional ballot in 2014.²¹ **In short, there has been almost no reduction in the proportion of the electorate that has been obliged to cast a provisional ballot.**

¹⁷ In 2012, only the much larger states of California, Ohio and New York cast more provisional ballots. U.S. Election Assistance Commission: 2012 Election Administration and Voting Survey. A Summary of Key Findings, September 2013. Pg. 48 http://www.eac.gov/assets/1/1/990-050%20EAC%20VoterSurvey_508Compliant.pdf

¹⁸ O'Dell, Rob: “Despite progress in Arizona, early ballots again delay vote count”. (December 1 2014) <http://www.azcentral.com/story/news/arizona/politics/2014/12/01/arizona-politics-early-ballots-delay-vote-count/19720687/>

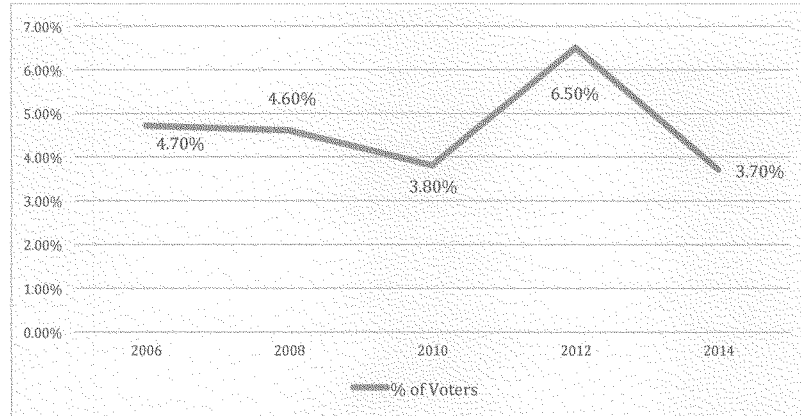
¹⁹ Duda, Jeremy, “Provisional Ballot Numbers Improve in 2014”. Arizona Capital Times Retrieved from <http://azcapitoltimes.com/news/2014/12/01/arizona-provisional-ballot-numbers-improve-in-2014-general-election/>

²⁰ U.S. Election Assistance Commission: 2010 Election Administration and Voting Survey. A Summary of Key Findings, December 2011 Pg. 51 http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf

²¹ In the lower-turnout 2014 election, 64,122 provisional ballots were cast

Graph 1: Provisional Ballots in Arizona

For each general election, the percentage in the total votes cast that have come from Provisional Ballots



Why are so many provisional ballots being cast in Arizona? That answer lies in the way elections are administered in Arizona and outdated state election laws. The increased popularity of early voting, especially through the Permanent Early Voting List (PEVL), set the stage for this problem. In 2014, 64 percent of all provisional ballots cast in Maricopa County were the result of voters who had been listed by election officials as “vote by mail,” but who nevertheless came to their polling place.

In order to shed more light on why this was happening and other polling-place issues, volunteer researchers from this project conducted an Election Day survey at polling places across the state to interview voters about their experiences. Researchers collected more than 225 in-person responses from the primary and the general election.

Not surprisingly, the most prevalent problem that our survey came across was voters being forced to cast a provisional ballot (40 percent of all responses). Of those voters whose provisional ballot was due to being flagged as an early voter, 27 percent responded that they had no memory of requesting a mail-in ballot, while other voters insisted that they had requested a ballot but had not received one.

The following excerpts are from interview notes taken at polling locations on Election Day:

“Diana received PEVL ballot day of election. Husband did receive his several weeks ago. Unsure why his came and hers was delayed. They had moved”

“Did not receive early ballot”

"We have voted at this location for 4 years and have not requested early ballot. The poll worker said this has been an issue for a lot of voters today."

"Thought I was (on early ballot) but didn't receive a mail-in ballot, so came to vote in person"

"Didn't realize he was early ballot. Didn't get it. Assumes wife signed him up."

Another driving force that has increased provisional ballot use is the number of changes in polling locations from one election cycle to the next. If a voter goes to the wrong polling location, he or she is supposed to be directed to their proper polling location because a vote cast at the wrong polling place will not be counted. But, if the voter either insists on voting there anyway, or in many cases is wrongly instructed to vote there, that person is given a provisional ballot. This issue repeatedly came up during the Shelby Response survey: **15 percent** of our respondents reported going to the wrong location, and half of those reported that they had voted at that same location in previous elections.

"Voted provisional here. This is new location but not on list here"

"This is where I come to vote. I came here last year."

"Usually votes here - Told perhaps he needs to go to Tribal election polling location"

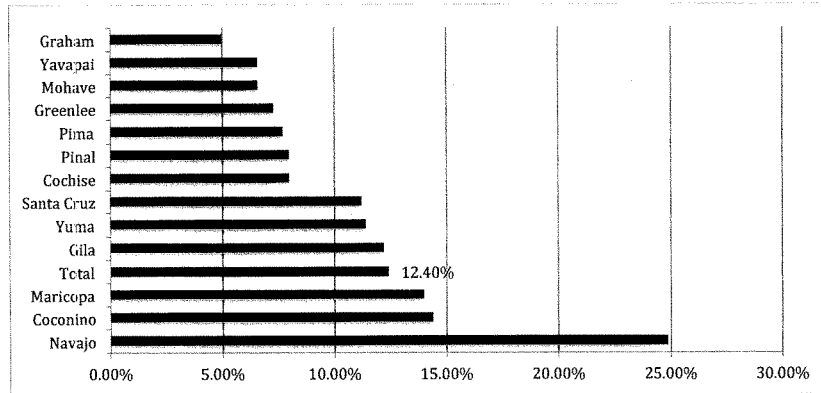
The Shelby field data reveal significant confusion among voters about why they had to vote a provisional ballot. Policy makers should be concerned that this type of confusion ultimately discourages voters and makes them less likely to participate in the future.

However, more troubling than the total number of provisional ballots cast is the number of those ballots that are rejected. **In 2014, based on available data, at least 12 percent of all provisional ballots were rejected, or a total of 7,921 ballots.** This estimate is based on 13 of the 15 Arizona counties that have reported this data thus far. This project has not yet obtained complete data for the 2014 general election. While this represents an improvement over the 18 percent that were rejected in 2012²² and the 17 percent that were rejected in 2010, it still represents one of the highest rejection rates in the country.

²² U.S. Election Assistance Commission: 2012 Election Administration and Voting Survey. A Summary of Key Findings, September 2013. Pg. 41 http://www.eac.gov/assets/1/1/0509a20fEAC%20VoterSurvey_508Compliant.pdf

Chart 3: Provisional Ballot Rejection

A county level chart showing the percentage of all provisional ballots rejected during the 2014 general election



Based on data collected thus far from each of Arizona's counties, the breakdown as to why provisional ballots were rejected follows:

- 20 percent were NOT registered to vote.
- 46.4 percent were voters voting in the wrong precinct.
- 11.8 percent were deemed 'not eligible' by the county recorder.
- 7.4 percent were voters providing 'incomplete information' when voting.

Early Voting

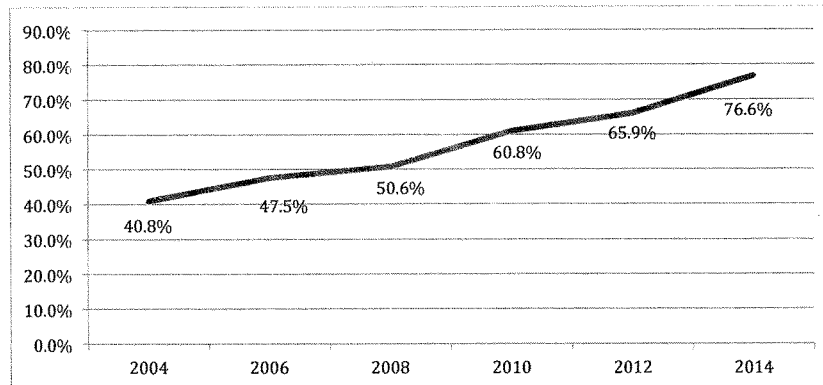
As Graph 2 shows, over the past decade early voting has become the dominant method of voter participation in Arizona. Based on initial data collected from the 2014 general election, more than three quarters of all votes cast were via early voting²³. This was by far the largest share of the vote in any statewide general election ever in Arizona. This explosion in early voting has also been fueled by the growth of Arizona's Permanent Early Voting List, which now includes 60.2 percent of all Arizona voters as of the 2014 general election.²⁴

²³ Voter file data; extracted February 2015

²⁴ *id.*,

Graph 2: Early Voting in Arizona

For each general election, the percentage in the total votes cast that have come from early ballots.



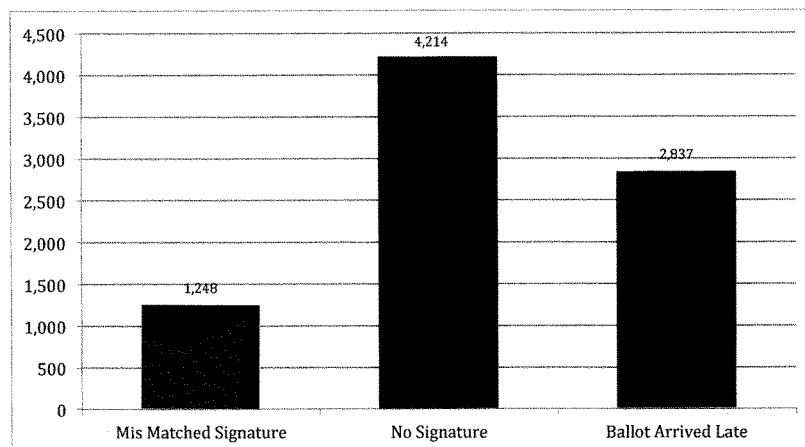
Many aspects of the early voting process are extremely beneficial for Arizona voters. Being on the permanent early voting list means getting the ballot in the mail without having to request it every election and includes city, state or federal elections. Additionally, early voters do not experience the challenge of locating their polling place, or making sure that they have brought acceptable forms of identification to vote in person. Their signature, under oath, when matched by elections workers, is sufficient.

However, the growth of voting by mail in Arizona has also created problems for voters. The growing popularity of voting by mail has resulted in more provisional ballots being cast by those people who go to the polls in person. It has also resulted in a higher number of ballots being rejected for mismatched signatures, no signatures at all, or ballots arriving to election officials after 7:00pm ON Election Day.²⁵ Chart 4 breaks down the proportions from the data available to us.

²⁵ ARS 16-547 Ballot Affidavit; form ARS 16-548, Preparation and transmission of ballots:
<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/16/00547.htm&Title=16&DocType=ARS>

Chart 4: Early Ballot Rejection

For each general election, the percentage in the total votes cast that have come from early ballots.



A total of **8,299 early ballots** (based on data collected thus far) were invalidated in 2014 for one of these problems. In 2010 the number was 7,761 rejected early ballots.²⁶ The 6.5 percent increase in rejected ballots in 2014 is particularly disturbing in light of the lower turnout that year. We are concerned that as more votes are cast by mail, these invalidation numbers will continue to increase.

The increase in late-arriving ballots is of particular concern. For starters, there is a substantial amount of inconsistency in how much of this data is gathered and maintained. Some counties do not keep track of the number of late-arriving ballots, while other counties admit that they do not capture all of their late-arriving ballots. So, the full extent of how many mail-in ballots arrive late statewide is not known. Second, the continued consolidation and closure of postal facilities in Arizona, and its effect on early ballot delivery is a worrisome unknown. In 2015, the Tucson USPS processing facility will close, with all mail then being routed through Phoenix.²⁷ Voters need to have confidence that the ballot they drop in the mail by the prescribed date and time will, in fact, arrive on time and be counted.

Who is most likely to have a ballot rejected and why?

Who loses their vote under current disqualification policies, and why? To shed light on these questions, this project acquired individual level data on rejected provisional ballots and early ballots from five counties: Maricopa, Pima, Cochise, Yavapai and Coconino. The two charts below

²⁶ U.S. Election Assistance Commission: 2010 Election Administration and Voting Survey. A Summary of Key Findings, December 2011 Pg. 43 http://www.eac.gov/assets/1/Documents/990-281_EAC_EAVS_508_revised.pdf

²⁷ "Postal Service releases schedule of plant consolidations set for 2015" <http://www.savethepostoffice.com/postal-service-releases-schedule-plant-consolidations-set-2015>

reveal the patterns of rejection by age and ethnicity, with the overall 2014 voting population as a point of comparison.²⁸

Chart 5: Demographic Make-up of Ballot Rejections

Age distribution of rejected ballots in the 2014 general election

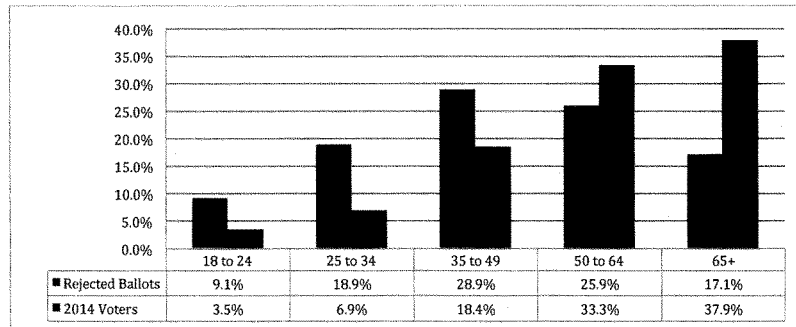
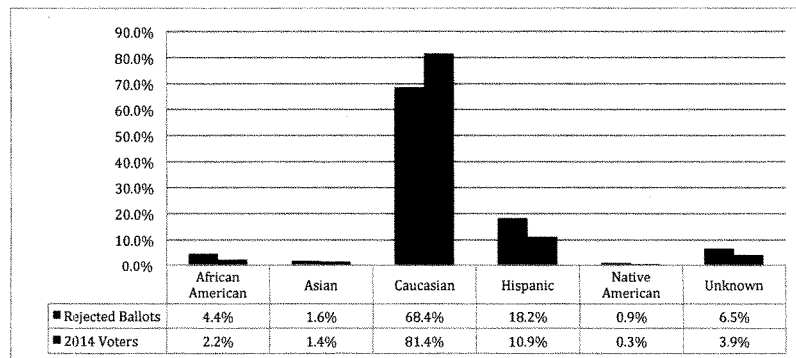


Chart 6: Demographic Make-up of Ballot Rejections

Racial distribution of rejected ballots in the 2014 general election



The data reveals stark differences in impact by age and race. **While voters under the age of 35 made up only 10.4 percent of the electorate in 2014, they made up 28 percent of all rejected ballots.** Similarly, voters aged 35 to 49 were also over-represented among rejections. However, older voters, or those voters over the age of 50, who made up over 71 percent of the total electorate in 2014, only made up 43 percent of all rejected ballots in this sample.

²⁸ Demographic voting statistics for the 2014 electorate obtained from Arizona voter file.

The racial differences are also concerning. **More than 18 percent of all rejected ballots come from Hispanics, despite only being 11 percent of the total vote.** Caucasian (or White) voters, who made up 81 percent of the electorate in 2014, had their ballots rejected much less often, comprising 68 percent of the rejected pool. **In short, young and Hispanic voters make up a disproportionate number of provisional ballots cast and rejected ballots.**

The fundamental problem, we suggest, is that current Arizona election laws are geared toward throwing ballots out rather than increasing turnout and participation. Here are some examples:

- ARS 16-552 dictates that if a voter's affidavit on their early ballot is "not sufficient," the vote does not count.
- ARS 16-547 requires that every ballot be delivered to the county recorder by 7 p.m. on Election Day.
- ARS 16-122 states that no person is permitted to vote unless that person's name appears in the precinct register.
- ARS 16-584 states that the precinct where the voter cast their provisional ballot must be correct for the address in which the prospective voter currently resides, otherwise the entire vote is thrown out.

These statutes lay a foundation that results in consistently high numbers of provisional ballots being cast, and the rejection of many of those ballots. As this report will show, there are simple changes to each of these statutes that could reduce the number of provisional ballots cast and the number of rejected early and provisional ballots. This can be done without degrading the integrity of an election.

How important is this problem? While the number of rejected ballots might seem small compared to the overall number of votes cast in an election, they are not insignificant. The implications are both long term and politically significant. Rejecting the ballots of qualified voters creates frustration and undermines the legitimacy of elections. The immediate impact can be significant. There were enough rejected ballots to impact several close races in the 2014 election. To examine the potential impact these disqualified ballots might have had, we separated the rejected ballots by district when we had sufficient data to do this. Our analysis included Maricopa, Pima, Cochise, Coconino and Yavapai counties. Researchers then examined races with extremely small margin of victories. Table 1 highlights six elections²⁹ where disqualified ballots might have made a difference in the final outcome.

As table 1 below shows, early ballot and provisional ballot disqualification rates can have real effects on election outcomes, especially in local races like school boards and city councils, where races tend to be close.

²⁹ County level election canvass data; 2014 general election.

Table 1: Close Elections and Rejected Ballots

Comparison of margin of victory versus the number of rejected ballots in close elections

County	Election	Margin of Victory	Rejected Ballots
Coconino	Tusayan Sanitary District Board Member	1	1
Maricopa	Mesa Unified School District Governing Board Member	75	311
Maricopa	City of Glendale Council- Octotillo District	19	19
Maricopa	City of Scottsdale Council Member	54	309
CD-2	U.S. Representative District 2 (Pima + Cochise Counties)	167	822
Cochise	Tombstone School Board Member	0 (Tied)	17

Interstate Crosscheck and the cancellation of voter records

"She was not on the list, but this is where she is registered to vote. They didn't give her any other instructions on what to do"- Eye-witness account from Shelby Researcher, August 26th 2014

In 2005 four mid-western states -- Kansas, Nebraska, Missouri and Iowa -- signed a Memorandum of Understanding to coordinate their efforts to find and remove duplications in their voter files. From that MOU was born the "Interstate Crosscheck" program. Per a report issued to the 2013 Presidential Commission on Election Administration, 26 states now participate in the program, impacting 84 million voters³⁰.

Interstate Crosscheck is run out of the office of Kansas Secretary of State Kris Kobach, a Republican who is notable in Arizona for his role in drafting the controversial anti-immigrant Senate Bill 1070. The program's goal is to compare voter file records between states to find duplicates, and to use an individual's voting history to determine whether the occurrence of voting is happening in more than one locale. Participating secretaries of state send their statewide voter files to Kansas election officials, who aggregate the data to find duplicates. When flagged, Kobach's office sends potentially duplicate records back to the participating states, where officials can verify the information and remove duplicate voters from their rolls.³¹ The program is free for states participating, and Arizona is one of the participants. Crosscheck has reportedly developed a "master list" of nearly 7 million names, all of which are tagged as potentially duplicate registrations.³²

A program like this could potentially be useful. Much of the U.S. population is highly mobile, moving between counties and states on a regular basis. According to the Census Bureau, between

³⁰ "Presentation by Kansas Secretary of State Kris Kobach to the Presidential Commission on Election Administration" September 20, 2013 <https://www.supportthevoter.gov/files/2013/09/SOS-Kris-Kobach-Interstate-Crosscheck-PCEA-.pdf>

³¹ Interstate Voter Registration Crosscheck Program Presentation: National Association of State Election Directors: January 26th 2013 http://www.nased.org/NASED_Winter_2013_PP_Presentations/KANSAS.pdf

³² Flanagan, Jake: "Is it Voter Fraud or Voter Suppression in 2014?" New York Times. October 2014 Retrieved from http://op-talk.blogs.nytimes.com/2014/10/31/voter-suppression-strikes-back-in-2014/?_r=0

2012 and 2013 at least 35.9 million people relocated.³³ That is 11.7 percent of the total population and includes millions of registered voters. When registered voters move, they rarely notify their previous state or county of their plans, which usually leaves their old voter record on file with their previous state for months, if not years. States that do not deploy permanent portable registration systems are more in need of help than others cleaning up outdated records from their voter rolls.

There is mounting evidence, however, that Crosscheck is being misused so that eligible voters are being targeted and disenfranchised. A recent media story profiled voters who were kicked off the voting rolls in North Carolina and Virginia as a result of Crosscheck data. These voters had lived at their same addresses for years. There were a disproportionately high number of surnames in communities of color, in particular last names common in the African American community.³⁴ Possible discrepancies in the crosscheck matching process have also been identified, including mismatches in middle names and suffixes. Matching on more reliable Social Security numbers is optional. Growing concerns about unreliable data have caused states to stop relying on Crosscheck. States opting out include Washington, Oregon and Florida.³⁵

These concerns prompted us to investigate how the crosscheck program has been used here. The program appears to be widely used in Arizona, or at least widely available. Through records requests and interviews with the Coconino County and Cochise County Recorders, we were able to obtain some useful information, but not enough to provide more than a fragmented picture of how aggressively the program is deployed at a statewide level. In a 2013 Crosscheck presentation to state election directors, Arizona was listed as having over 100,000 outdated voter registrations. But we do not know who these voters are or how many of them have had their voter registrations cancelled. Our records request to the Secretary of State's office was denied; a follow-up request is underway.

It appears that what Arizona counties actually do with the Crosscheck information varies. According to Cochise County, all cross-check-matched voters are sent a letter notifying them that they've been flagged. If the county does not receive a response, Cochise officials cancel those registrations.³⁶ However, in Coconino County – at least until recently -- no letter was sent and flagged voters were simply moved to the inactive list or cancelled altogether. Coconino County officials confirmed for this study that they identified voters who had been cancelled after appearing on the crosscheck list, but were re-activated when they attempted to vote. This has prompted Coconino County to re-evaluate their approach and take additional steps before removing any voter based on Crosscheck data.³⁷

During the discussion with Coconino County officials, one issue became apparent: The difficulty in identifying which voter record in a Crosscheck list is "old" and which is "new." The point of the

³³ Ihrke, David. "Reasons for Moving: 2012 to 2013." United States Census Bureau, June 2014. Retrieved from: <http://www.census.gov/prod/2014pubs/p20-574.pdf>

³⁴ Palast, Greg; "Jim Crow Returns: Millions of Minority Voters Threatened by Electoral Purge" Al Jazeera America. October 2014 Retrieved from <http://projects.aljazeera.com/2014/double-voters/>

³⁵ Miranda, Blue: "Florida & Oregon Drop of Kris Kobach's Faulty Voter Roll Crosscheck Program". RightwingWatch.org, April 2014. Retrieved from: <http://www.rightwingwatch.org/content/florida-oregon-drop-out-kris-kobachs-faulty-voter-roll-crosscheck-program>

³⁶ Interview via phone with Christine Rhoades, Cochise County Recorder.

³⁷ Interview via phone with Patty Hansen, Coconino County Recorder

program is to provide information that indicates that “John Doe’s” voter record in one state is newer than his record in another. When there is a match, theoretically the oldest record should be cancelled. This is done based on a registration date (the more up-to-date registration, again in theory, being the most up-to-date record). However, Coconino County found that this assumption is not always correct. Coconino officials found that, in some cases the Crosscheck record in their county was actually the newest record and should not be the one cancelled.

Based on the information that has been made available (including an actual list of Crosscheck voters from Coconino County) and the reluctance of election officials in Arizona to provide a complete picture of how the program is used throughout the state, we note the following findings and concerns that merit follow up from election officials, policy makers and the media:

- 474 out of the 1,239 records in the Coconino Crosscheck to-be-deleted file were current, active voters, raising questions about over-inclusion.
- 73 Crosscheck records had Arizona 2013 registration dates, and 292 records had registration dates since the beginning of 2012. The file was produced in January 2014, raising questions about whether these recent registrations should have been considered “new” rather than “old.”
- The Coconino Crosscheck-identified voter list tends to over-represent certain demographic groups: The people on this list tend to be younger (average of 41 v. 48 years old); Independents (45 percent v. 34 percent for the county as a whole), and mostly male (56 percent v. 48 percent county-wide).
- The Crosscheck matches included 61 people with completely different middle names, suggesting lack of a thorough matching process.
- Lack of uniform procedures. There does not seem to be any uniform procedure among counties for notifying voters that they are on this list, and what procedure is in place to remove them from the rolls.
- Lack of transparency. At this point, only two counties have released any Crosscheck information, and the Secretary of State has denied a records request. Arizona’s top elections officials are making it difficult for the public to know how many voters this program has flagged, and who has been removed from the voting rolls.
- Partisan concerns. The Crosscheck program is run through the Republican secretary of state in Kansas, who has become a national figure identified with hardline anti-immigrant legislation, and most participating states are headed by Republican election officials.

In order to address these concerns, the Arizona Shelby Project recommends that the Secretary of State and County Records officers deal with potentially duplicate registrations with the ERIC (Electronic Registration Information Center) system, which was established by the non-partisan Pew Charitable Trust. This process should also be made more transparent – the public should be able to learn easily how many voters have been removed from the voter rolls due to cross-state matching, as well as who those voters are.

Election administration

There are significant inconsistencies among Arizona counties and within individual counties in how polling-place procedures are implemented on Election Day. A major source of complaint concerns the implementation of voter identification law. The Arizona Shelby team continues to receive reports of poll workers misinterpreting voter ID requirements and requiring voters to present additional forms of ID, even if the type of ID they have provided is sufficient according to statute.

Reports also continue to surface regarding equipment malfunctions on Election Day that result in longer wait times and accessibility challenges for voters with disabilities.³⁸ These issues persist despite funding available to the Secretary of State to address them. Since 2010, Arizona has reportedly been sitting on approximately \$16 million of unused HAVA (Help America Vote Act) funds.³⁹ This money could be used to update and modernize election systems.

Next Steps: Protecting the right to vote and the right to know

This report has highlighted current election laws, procedures, and practices that put undue burden on the right of citizens to vote and the increased chance that their ballots will be disqualified. These rules and practices do nothing to thwart vote fraud, a virtual non-problem. What they do is to discourage participation and reduce the confidence of citizens in the electoral process. While Prop 200's Voter ID and registration requirements will continue to create obstacles for voters, there are areas where officials can take immediate steps to improve election processes and ensure that ballots cast by eligible citizens are counted.

In the past, however, the Arizona legislature, the Attorney General, and the Secretary of State have been openly hostile to reforms that would increase voter participation and transparency in the election system. With new elected officials at the helm, we hope that the discussion will move in a more positive direction and that Arizona's policy makers will take concrete steps towards real election reform.

In that spirit, as well as to start a conversation that Arizona needs to have about voting, we present an action plan in the form of nine simple steps that can be implemented through legislative action or procedural change. Each of these steps would reduce confusion, increase transparency and participation, and ensure that all eligible ballots cast are counted.

³⁸ Per survey responses obtained, at polling places on Election Day through the Shelby Response Project

³⁹ U.S. Election Assistance Commission: Strengthening the Electoral System One Grant at a Time, A Retrospective of Grants awarded by the EAC. April 2003- December 2010.
<http://www.eac.gov/assets/1/Documents/FY2010%20Grants%20Report%20FINAL.pdf>

Extend the current voter registration deadline

Repeal ARS 16-120, which states that no person can vote whose registration hasn't been received at least 29 days before the election, and replace it with language allowing for Election Day Registration (EDR). Given how mobile voters have become and how frequently they move, participation in Arizona elections would increase if lawmakers extended or eliminated the current voter registration deadline, which forces voters to register 29 days before an election. This reform would increase voter participation among a wide range of groups while at the same time reducing the number of provisional ballots cast by newly arrived citizens who cannot qualify in time for the election.

Election Day Registration is already the law in nine states, and studies have shown that voter participation in those states consistently lead the nation, averaging anywhere from 7 percent to 12 percent higher turnout over non-EDR states.⁴⁰ The costs of EDR are small. In a survey of county election officials in EDR states Iowa and North Carolina, a majority of counties reported little or no significant cost increases associated with EDR.⁴¹ Printing costs were the most significant expense incurred. Election officials also reported that any cost increases for administering an election due to EDR were offset by the decreased amount of time and resources required to process provisional ballots.

If EDR is not a possibility, the next-best approach would be to amend ARS 16-120 allow different deadlines for different methods of voter registration. It should be relatively easy, for example, for counties to allow in-person voter registration within 10-15 days before the election. Voter Registration organizations should be allowed to submit voter registrations within five days of an election, as long as those registrations date before the voter registration deadline.

Increase the types of identification allowed at the polling place

Amend ARS 16-579, which states that valid forms of identification at the polling place must bear the photograph of the elector. Otherwise the voter needs to provide two types of different identification that prove their residency. ARS 15-579 also details the types of valid identification that can be used including a driver's license, a non-operating identification license, tribal enrollment card, or other state or local-issued identification.

It has been more than a decade since the passage of Proposition 200, which requires voters to present identification at their polling place. It is clear through the data on conditional provisional ballots, as well reports from polling places on Election Day, that election officials and poll workers are still confused about how this requirement should be implemented and what type of documents voters are allowed to use. The statute as written is causing unnecessary confusion.

Other types of valid identification should be allowed at a polling place, including student identification cards from an accredited college or university or technical or vocational college in the

⁴⁰ "Turnout Rate in SDR vs Non-SDR States, Midterm Elections" Demos. <http://www.demos.org/data-byte/turnout-rates-sdr-vs-non-sdr-states-midterm-elections>

⁴¹ Rokoff, Laura, Stokking, Emma "Small Investments, High Yields: A Cost Study of Same Day Registration in Iowa and North Carolina" Demos

state of Arizona. Veteran Health Identification Cards issued by the U.S. Department of Veteran Affairs should also be accepted. These types of identification are issued by institutions that routinely determine citizenship eligibility and should be accepted as valid forms of identification at a polling place. A recent study conducted by the U.S. Government Accountability office found that voter ID policies have a negative effect on voter turnout, especially among voters of color and younger voters.⁴²

Take steps to reduce rejections of early ballots

Amend ARS 16-552, which states that if a voter's affidavit on their early ballot is "not sufficient" the vote shall not count. Every year, a larger percentage of Arizona voters choose to cast their ballots through the mail. As they do, more and more votes are deemed ineligible. As we have shown, thousands of mail-in ballots are disqualified every general election due to signature issues and late arrivals. In 2014 at least 1,209 general election ballots were thrown out because the signature on the early ballot envelope was determined to be different than the signature that the county recorder had on file for that voter. One solution would be to give voters more time after an election to resolve any signature issue with the county recorder. For example, Oregon recently passed legislation that gives voters up to 14 days after an election to resolve a signature problem⁴³

Amend ARS 16-547, which states that early votes are not counted if they arrive at the county after 7 p.m. on Election Day. Late-arriving ballots are rejected under this provision. A simple solution would be to amend the statute to allow for any ballot postmarked on or before Election Day to be counted. A bill similar to this was introduced recently in California.⁴⁴ As more and more votes are cast by mail, and as budget cuts bring into question the ability of the USPS to deliver all ballots in a timely manner. The law should be amended to accept ballots that are post-marked on election day but arrive within at least three days of the election.

An additional procedural change that should be adopted is to allow voters, who take their early ballot to their polling place on Election Day, to open their ballot envelope and feed their ballot into the optical scan voting machine at the polling place. In 2014 an estimated 277,000 voters dropped off their early ballot at their polling place on Election Day⁴⁵. This procedure would also reduce the number of no signature or bad signature invalidations as County election officials would have fewer ballot envelopes to examine. It would also have the added benefit of reducing the amount time spent processing ballots after Election Day.

⁴² GAO: Report to Congressional Requestors. Issues Related to State Voter Identification Laws. September 2014

⁴³ Borrud, Hillary "Bad Signatures top reason for ballot rejection" Blue Mountain Eagle, October 2014
<http://www.bluemountaineagle.com/bme/capital-bureau/20141029/bad-signatures-top-reason-for-ballot-rejection>

⁴⁴ S 29, Senate Third Reading: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0001-0050/sb_29_cfa_20140820_185401_asm_floor.html

⁴⁵ To determine this number we compiled all of the pre-election day early voting return data that was available from the 2014 general election, which was over 900,000 voters statewide. We then compared these voters with the official vote history released from each county and narrowed to those voters who were flagged as voting early, but who had not voted before election day, according to the data we had access to. This left approximately 277,000 voters who had a strong likelihood of turning in their ballot on Election Day.

Adopt permanent portable voter registration

Amend ARS 16-135, which puts the full onus on the elector to notify the county of any change of address in order to update their voter registration. According to the Census, every year 10 to 12 percent of Americans move within their same county, or to a different county within the same state. Research also shows that provisional ballots tend to be disproportionately cast by young and minority voters.⁴⁶ Currently, a voter can cast a provisional ballot if he or she has moved within the county before Election Day and can show proof of their new address, but there is no such remedy for voters who move between counties.

This problem could be remedied with permanent portable voter registration. Election officials could access a centralized statewide database (which should already exist in the form of the statewide voter registration database) at polling locations across the state. Officials would then be able to quickly determine if a voter is a valid registrant. The voter would then fill out an affidavit with his or her new address or name. Once verified, the voter would receive a regular ballot instead of a provisional ballot. This reform would increase participation as well as reduce the number of provisional ballots cast.⁴⁷ Election officials could utilize USPS National Change of Address records to keep the centralized database updated.

A permanent portable registration system would allow an individual's voter registration to stay connected to that individual, no matter where that person moves. This would help narrow the voter turnout gap among those communities most likely to change address often -- which includes younger voters, communities of color, and low-income voters.

Allow partial counting of provisional ballots

Amend ARS 16-584, which states that the precinct the voter votes their provisional ballot in must be correct for the address they live in, otherwise the entire vote is thrown out. In Arizona, one of the primary reasons a provisional ballot is rejected is because the individual went to the wrong precinct to vote. Thousands of ballots are rejected every year for this reason.

This type of full rejection law is completely unnecessary and does not reflect the reality that, for a variety of reasons, people are mobile. However this is an easy problem to fix. Even though a voter may vote in the wrong precinct, that individual is likely to be voting in the right state, the right county and the right congressional district. So, at a minimum, provisional ballots cast in the wrong precinct should be counted in any statewide race, and if the voter is in their right congressional or legislative district, those votes should be counted as well. Fifteen states have laws that salvage some portion of votes cast in an incorrect precinct.⁴⁸

⁴⁶ Field, Joshua; Posner, Charles; Chu, Anna: The racially Discriminatory Effects of Provisional Ballots. American Progress. Retrieved from: <https://www.americanprogress.org/issues/race/report/2014/10/29/99886/uncounted-votes/>

⁴⁷ Kennedy, Liz, Cha, Mijin "Millions to the Polls: Permanent & Portable Voter Registration. Demos, February 18 2014 <http://www.demos.org/publication/millions-polls-permanent-portable-voter-registration>

⁴⁸ Sherman, John; Fair Elections Legal Network: Saving Votes, An Easy Fix to the Problem of Wasting Provisional Ballots Cast out of Precinct. February 24 2014 <http://fairelectionsnetwork.com/sites/default/files/Provisional%20Ballot%20Rejection%20Memo%20FINAL.pdf>

Eliminate Arizona's bifurcated voting system

In 2013 Attorney General Tom Horne issued a legal decision that prompted election officials to create a second class of voters eligible only to vote in federal elections. These voters registered to vote through the federal voter registration form, which is less comprehensive than the state form. Relying on the federal voting registration form, in other words, prevents them from participating in state and local elections. With the upcoming 2016 presidential election, this group of partially disenfranchised voters will certainly increase and the costs of administering a special ballot, which are already high, will also increase. AG Horne's interpretation of existing law is open to doubt, and should be abandoned.

Opt into the ERIC System (Electronic Registration Information Center)

Earlier, this report detailed concerns with the Interstate Crosscheck program run by Kansas Secretary of State Kris Kobach. Multiple reports have surfaced across the country that the Crosscheck program unfairly targets minority voters, and that the data-matching processes produce a large number of false matches. Some states have already opted out of the program, citing concerns about the veracity of the data. Arizona should do the same.

Arizona should join states that are using the ERIC system, which is supported by the non-partisan Pew Charitable Trusts.⁴⁹ States using the ERIC system report increases in voter registration and decreases in the use of provisional ballots (because the process for identifying "dead" voter registration records is more effective.⁵⁰

Allow counties to designate all-mail-in elections

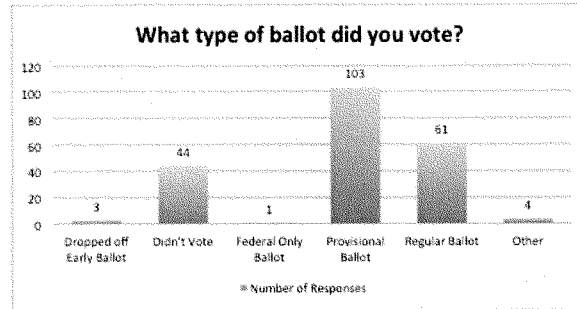
Amend ARS 16-409, which states that only towns and school boards can conduct all-mail ballot elections. In 2014, at least 75 percent of Arizona voters cast an early ballot in the general election. Given this high and growing level of mail-ballot use, counties should be able to designate all-mail ballot elections for statewide elections if they believe a high enough percentage of the vote will be cast by mail. The language should also include implementation of Election Day voting centers, which would allow voters who have misplaced their early ballot to request a new one on the day of the Election.

⁴⁹ <http://www.pewtrusts.org/en/projects/election-initiatives/about/eric>

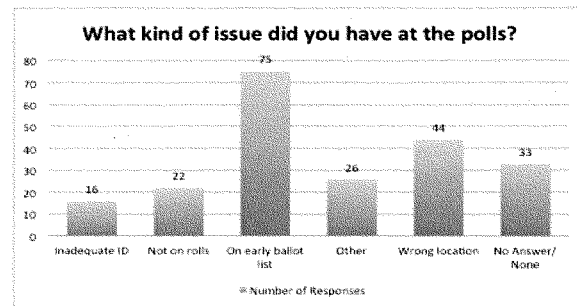
⁵⁰ Bland, G., & Burden, B.C. (Dec 2013). Electronic Registration Information Center (ERIC) stage. <http://www.rti.org/publications/abstract.cfm?pubid=21769>

Appendix: Shelby Survey Response Analysis

Arizona Shelby Project researchers collected 225 voter surveys from the 2014 primary and general elections. These responses document the various issues and challenges that Arizona voters have faced on Election Day. Researchers continue to collect additional surveys from multiple partner sources to add to this database.



Among the findings, a plurality of survey respondents reported that they had to cast provisional ballot. 48 percent of all survey respondents reported voting provisionally, as opposed to 30 percent of respondents who reported voting a “regular” ballot. One in five survey respondents reported not voting at all. Of the 20 percent of survey respondents who reported NOT voting, the majority of them cited the reason for denial as being at the wrong polling location. The following chart breaks down the issues that voters reported having on Election Day; issues that seem to match up closely with the data the report’s researchers collected and reported.



The primary issue voters cited -- as well as the most prevalent reason reported for voting a provisional ballot -- was that the voter was already on the early voting list and records showed they had received a ballot by mail. This issue was cited by 35 percent of respondents. Of those respondents, 32 percent reported that they did not remember requesting an Early Ballot.

Another 20 percent of respondents reported going to the wrong polling location. When researchers followed up with these voters, half reported going to a wrong location. They also reported that they had previously voted at that same location, or thought they had been directed to that location by election authorities. Also, 20 percent of these respondents reported that they did not receive adequate information from poll workers indicating where they should go to vote.

Other results from our survey included:

- 11 percent of survey respondents reported not being on the voter rolls when they attempted to vote. Follow up to this issue, issues ranged from voters being on the “inactive list,” voters updating their address with the DMV, thinking that that also updated their voting address, a name change due to getting married, and simply not knowing why they weren’t on the rolls (after reporting either registering to vote or voting at that location previously).
- 7 percent of respondents also reported a voter identification issue, including lack of a driver’s license or address mismatch on the IDs they presented at the polling place.
- Other issues reported by survey respondents on Election Day included computer malfunctions, reports of voters feeling frustrated and intimidated, and lack of proper equipment. At one location, the audio was not working, so a blind voter needed the ballot read to them by a poll worker. Another poll worker reportedly made a voter verbalize their voting address.

October 1, 2019

**Written Testimony by Adrian Fontes, Maricopa County Recorder
submitted to the House Administration Committee Subcommittee
on Elections regarding the Congressional Field Hearing on Voting
Rights and Election Administration**

Chairwoman Fudge, Ranking Member Davis, and members of the committee, thank you for allowing us to submit written testimony on the subject of Voting Rights and Election Administration.

As a native Arizonan, born in the border town of Nogales and the first Latino elected to county-wide office in Maricopa County, I am a strong proponent of the Voting Rights Act and for breaking down the barriers to voting in the State of Arizona. In fact, it was the disastrous 2016 Presidential Preference Election in Maricopa County that solidified my decision to run for County Recorder.

As I testified to the Advisory Committee of the Civil Rights Commission in March 2018, the Shelby decision has left states like Arizona, previously under DOJ pre-clearance, to their own devices as it pertains to the conduct of elections. I applaud you for spending time in our state and looking into actions that our state legislature has taken enacting laws on elections administration, particularly in how it affects voters of racial and/or language minorities covered by the Voting Rights Act.

But it is also important to understand the efforts that County Recorders and Elections Officials have taken to mitigate those impacts and ensure that all eligible voters have access to voter registration and voting, while also doing the difficult job of ensuring our elections are protected against outside forces that strive to tamper with and undermine the bedrock of our democratic process.

In 2018, Maricopa County had the highest midterm election turnout in recent history. In 2014, voter turnout was 45.32%; in 2018 turnout jumped to 64.50%, with 1.45 million ballots cast, the most ever cast in a mid-term election. This is a 19.18 point or 42.32% increase.

To encourage this turnout, we have changed our voting models to respond to the needs of our voters with improved technologies and training. An increasing number of voters are choosing to sign up for the Permanent Early Voting List (PEVL), which means that whenever they are eligible to vote in an election, they are requesting that we send them a ballot by mail. From October of 2014 to October of 2018, the number of voters on PEVL increased from 43.85% to 71.86%. PEVL voters receive their ballot by mail, but still have many options in the way they chose to vote. Voters can choose to mail their ballot back or drop it

off at any voting location in Maricopa County. They can also choose to come in to any early voting location or Election Day voting location and vote in person.

If a voter chooses to vote in person, we are also encouraging turnout by making that process easier. In 2018, we introduced our own county-developed SiteBook check-in stations, which was recognized by the National Association of Counties with an Achievement Award in Information Technology. In addition to allowing voters to check in more quickly thereby reducing lines, SiteBooks allow poll workers to update a voter's address and/or check in real-time if a voter had returned their early ballot to the Elections Department, reducing the need for voters to vote a provisional ballot. While in 2014, there were 39,111 provisional ballots cast, in 2018 this number was reduced to only 16,409 – a reduction of 238%.

When we paired the SiteBooks with ballot-on-demand printers, it allowed us to provide the voter the correct ballot, no matter where the voter resides in Maricopa County, significantly reducing out of precinct provisionals and ensuring voters ballots count. This Vote Center model gave the individual voter 41 different possible locations to vote at on Election Day, their assigned Polling Place plus 40 Vote Centers. Thirty-five of these 40 vote centers were open the week before the election, giving voters even more time to vote. We also allowed emergency voting at 5 of these vote centers over the weekend and Monday before Election Day.

From expanding Curbside Voting and our Special Election Board Programs to offering large-format, Braille ballots for those that have vision challenges and audio ballots for a non-written language - voter access is expanding in Maricopa County. During the November 2018 election, we provided 628 large print and 22 Braille ballots, and sent teams of two workers of differing parties to assist over 250 voters vote their ballots.

Despite not being under DOJ pre-clearance, Maricopa County made the independent decision to significantly increase our voter outreach efforts. When I came into office, I hired a team of employees whose mission is to increase accessibility and the transparency of the Recorder's Office and Elections Department by reaching out to our underserved communities and future voters, and increasing voter registration through a deputy registrar program. Since 2017, the Community Relations Team has conducted 26 roundtable meetings and have 18 more planned before the 2020 election. Our Roundtable project allows us to sit and listen to members of historically under-served communities and directly address the challenges they are facing. It is just one way we involve the public to make better-informed decisions on how to administer elections. Our forward looking focus with an awareness of past disenfranchisement is how we run elections that better serve our voters.

One of the communities with whom we have focused our efforts is the Native American Community. We have held 5 roundtable meetings with 14 organizations represented, discussing topics such as voting in state and local elections versus tribal elections, training

of workers to recognize different tribal identification and effective ways for communication. It is very important to note that since before 2006, we have never reduced the number of polling locations on our Native American reservations. We also strive to ensure Native American workers are available at our polling locations. Additionally, despite O'odham losing section 203 coverage in 2016 according to the Census Bureau, we continue to provide translations of the ballot and materials on request.

We have done all this while also significantly upgrading our security to address cybersecurity and physical threats. In the last two years, we have completed terrorism vulnerability assessments, in-depth penetration testing and architectural design reviews of all computing systems, constructed a cutting edge secure IT security work area in our Elections Department, hired an IT security officer, and conducted training and testing of all staff regarding Phishing. We work closely with our Secretary of State's Internet Security Office and the Arizona Counter Terrorism Information Center (our state's Fusion Center), Terrorism Liaison Officers and the Department of Homeland Security. We have also developed plans to bolster physical and employee security and conducted staff-wide trainings on situational awareness and active shooters.

To accomplish much of this, we have relied on strong relationships with our partners on the State and Federal level, including those with the U.S. Elections Assistance Commission, the FBI and the Department of Homeland Security. The Help America Vote Act funds that were appropriated by Congress in 2018 and are currently being considered in this year's appropriations bill are vital to these efforts.

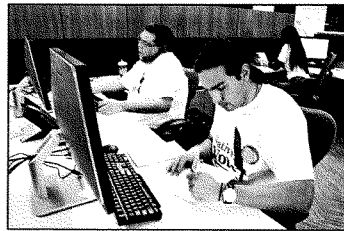
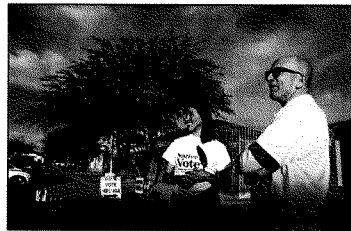
The House of Representatives took the possible threats to our elections seriously and has acted to assist State and Local Elections official by providing \$600 million in this year's appropriation bill. We thank you for your support, and implore you to work with the Senate to ensure this number is preserved. We also ask you to maintain the House language requiring that 50% of the funds be used by or on behalf of local elections, and that local elections officials be consulted in the development of the state's plan for the use of these funds. This ensures the money goes where it is most needed – on the front lines of elections, and that the local elections officials there have a seat at the table when the plans to assist their efforts are developed.

In this era of voter skepticism about our institutions, we must all strive to ensure full and appropriately contextual information be available to the public. We want people to have and gain confidence in our election system. Again, we thank you for coming to Arizona, for allowing us to express our views, and for all you do to protect our democratic process.

Native Vote – Election Protection Project 2016 Election Report



Indian Legal Clinic
Sandra Day O'Connor College of Law
Arizona State University
March 6, 2018



**ARIZONA NATIVE VOTE – ELECTION PROTECTION PROJECT
2016 FINAL REPORT**

INTRODUCTION.....	4
What is Arizona Native Vote – Election Protection Project?.....	4
Project Framework	4
2016 Volunteers	5
Project Partners	6
<i>National Congress of American Indians</i>	<i>6</i>
<i>Indian Legal Clinic</i>	<i>6</i>
<i>Inter Tribal Council of Arizona</i>	<i>6</i>
<i>Native American Bar Association of Arizona</i>	<i>6</i>
2016 Election Protection Plan	7
Election Day Data	8
Incident Reports by Type.....	9
Provisional Ballots	15
Voter Turnout	16
EARLY VOTING ON INDIAN RESERVATIONS	17
Barriers to Early Voting for Native Americans in Arizona	17
The Right to Early Vote in Arizona	18
Early Voting in Indian Country Data.....	18
Early Voting by Tribe	19
Navajo Nation	19
Hopi Tribe.....	20
Havasupai Tribe.....	21
Hualapai Indian Tribe.....	21
Fort Mojave Indian Tribe	21
Yavapai-Prescott Indian Tribe.....	21
Yavapai Apache Nation.....	21
Tonto Apache Tribe.....	22
White Mountain Apache Tribe.....	22
San Carlos Apache Tribe	22
Colorado River Indian Tribe	23

Fort McDowell Yavapai Nation	23
Salt River Pima Maricopa Indian Community	23
Tohono O'odham Nation	23
Pascua Yaqui Tribe	23
Quechan Tribe	24
Cocopah Tribe	24
Ak-Chin Indian Community	24
Gila River Indian Community	24
TRIBAL IDENTIFICATION CARDS	25
SECTION 203 OF THE VOTING RIGHTS ACT	30
Apache County	34
Navajo Nation Language Assistance	35
Coconino County	35
General Language Assistance	36
Hopi Language Assistance	36
Navajo Language Assistance	37
Yuma Language Assistance	37
Gila County	38
Apache Language Assistance	38
Graham County	39
Apache Language Assistance	39
Greenlee County	40
La Paz County	40
Maricopa County	40
Tohono O'odham Language Assistance	40
Mohave County	42
Yuma Language Assistance	42
Navajo County	42
Hopi Language Assistance	42
Navajo Language Assistance	43
Pima County	43
Tohono O'odham Language Assistance	43
Yaqui Language Assistance	44

Pinal County	44
Tohono O'Odham Language Assistance	44
Santa Cruz County.....	45
Yavapai County.....	45
Yuma Language Assistance.....	47
Yuma County	47
Yuma Language Assistance.....	47
Summary of 203 language assistance.....	48
CONCLUSIONS AND RECOMMENDATIONS.....	50

Appendices

APPENDIX I:	Incident Reports
APPENDIX II:	Provisional Ballots
APPENDIX III:	Voter Turnout
APPENDIX IV:	Early Voting Chart
APPENDIX V:	County Survey

INTRODUCTION

Native Americans did not have the right to vote in Arizona until 1948, when the Arizona Supreme Court overturned a long-standing ban excluding Native Americans from voting.¹ Arizona continued to prevent Native Americans from voting and participating in elections until 1970, when English literacy tests were outlawed.² Since then, Native Americans in Arizona have faced difficulties voting in Arizona.³ The most recent assaults on the right to vote include the Arizona voter identification law, which resulted in a sharp decrease in Native voters in 2006, and the Arizona ballot collection law that passed in 2016, which makes ballot collection a felony. The Indian Legal Clinic established the Arizona Native Vote – Election Protection Project in 2008 to protect the voting rights of Tribal members and to ensure access to the ballot.

What is Arizona Native Vote – Election Protection Project?

Initiated by the National Congress of American Indians (NCAI), Native Vote is a national non-partisan campaign that aims to ensure that every American Indian and Alaska Native exercises his or her right to vote in federal and state elections. Since 2004, Native Vote has been working in conjunction with Tribes and local communities to turn out record numbers of American Indian and Alaska Native voters in national and state elections. Arizona Native Vote is a local branch of NCAI's national Native Vote, dedicated to protecting the rights of Native voters throughout Arizona. Arizona Native Vote consists of two prongs: Get Out the Vote (GOTV) and Election Protection. Arizona Native Vote works to register voters through registration drives and by coordinating efforts with national Native Vote GOTV campaigns. Travis Lane at the Inter Tribal Council of Arizona (ITCA) serves as the state coordinator for the GOTV portion of Arizona Native Vote.

In 2008, ITCA, the Arizona Indian Gaming Association, and the ASU Indian Legal Clinic (Clinic) established the Arizona Native Vote – Election Protection Project (Project) in response to voter disparities as a result of the voter identification law passed in 2004. The group discussed the need to aid Native voters and established a framework to address voter issues.

The primary goal of the Project is to create a voter protection plan based on the needs of Arizona Tribal communities. The plan for 2016 included addressing tribal ID issues identified as barriers to voting during the 2012 General Election, providing voter education and assistance to Tribes and Tribal organizations who requested it, stationing trained volunteers at polling locations in Indian Country, and continuing a hotline staffed by knowledgeable attorneys and law students to respond to challenges faced by individuals trying to vote.

Project Framework

The Clinic works with its partners to develop a voter protection plan in advance of the election. The voter protection plan outlines the strategy for addressing potential issues prior to the election and the strategy to address voter issues on Election Day. Outreach efforts are made to local

¹ *Harrison v. Laveen*, 67 Ariz. 337 (1948).

² *Oregon v. Mitchell*, 400 U.S. 112 (1970).

³ See generally, Patty Ferguson-Bohnee, *The History of Indian Voting Rights in Arizona: Overcoming Decades of Voter Suppression*, 47 ARIZ. ST. L. J. 1099 (2015).

counties, Tribes, Native organizations and students. The Clinic coordinates with NCAI, ITCA, and the National Election Protection Coalition to obtain and create training materials.⁴ The Clinic identifies polling locations in Arizona Indian Country, recruits volunteers, trains volunteers, and assigns volunteers to polling sites. ITCA secured a dedicated hotline number, and the Clinic and ITCA ensure that the hotline number and voter protection materials are provided to all Arizona Tribes and Tribal media outlets.

The Project was developed to ensure access to the polls and to prevent voter disenfranchisement. The primary goals of the Election Protection Project are threefold:

- Identify and address potential voter issues prior to Election Day;
- Train and maintain a dedicated and reliable network of volunteers to respond to voting incidents on Election Day in order to protect Native Americans from voter intimidation and disenfranchisement; and
- Collect data illustrating voting obstacles.

2016 Volunteers

During the 2016 election cycle, the Project recruited eighty (80) volunteers. Volunteers worked together to answer any legal questions regarding voting rights and are separated into four (4) categories:

- legal mobile volunteers traveling to polling sites within an identified region;
- field volunteers stationary at polling sites;
- hotline volunteers fielding calls and trouble-shooting problems from individuals, Tribes, and volunteers; and
- on-call volunteers in Tribal general counsel offices.

Eight (8) people worked at the legal command center. These volunteers manned the hotline during the Presidential Preference Election, Primary Election day and General Election, answering questions from both voters and Native Vote volunteers stationed at the polling locations. Six (6) on-call volunteers, primarily Tribal general counsel, were available on Election Day to address any legal issues encountered at their respective reservations. Legal mobile volunteers were comprised of two (2) volunteers, with at least one lawyer per group. These teams traveled from precinct to precinct as directed by the legal command center. In total, Native Vote sent out sixty-six (66) legal mobile and field volunteers to twenty-two (22) polling locations spanning seven (7) counties and thirteen (13) reservations in Arizona.

⁴National Election Protection is a national non-partisan coalition led by the Lawyers' Committee for Civil Rights Under Law. It runs a national hotline, comprehensive voter protection field programs across the country and provides Americans with comprehensive voter information and advice on how they can make sure their vote is counted. Additional information about Election Protection is available at 866ourvote.org.

Project Partners

National Congress of American Indians

NCAI was founded in 1944 as a result of termination and assimilation policies that the United States forced upon Tribal governments in contradiction of their treaty rights and status as sovereigns. NCAI is the oldest and largest national organization representing Tribal governments. NCAI works on behalf of Tribes to ensure rights of Tribes and of Tribal members. NCAI spearheads a national Native Vote Project, which includes coordination of Get Out the Vote and Election Protection efforts across the country. NCAI also partners with the National Election Protection Coalition. NCAI conducts trainings on election law violations and election protection and provides training materials, trouble-shooting scenarios, and materials for volunteers.

Indian Legal Clinic

The Clinic is part of the Indian Legal Program at the Arizona State University Sandra Day O'Connor College of Law. The Clinic provides law students with an opportunity to participate in real cases dealing with Native peoples and Indian law issues. The Clinic serves both Indian Country and the nation's urban Indian populations by providing high quality legal services, with attention to the special legal and cultural needs of Native peoples. The Clinic works with its partners to identify voting issues and to train Election Protection volunteers. Patty Ferguson-Bohnee, the Director of the Clinic, serves as the Arizona Native Vote – Election Protection Project Coordinator. Clinic students, Rosemary Avila and Ally Von Seggern, led the 2016 Project effort.

Inter Tribal Council of Arizona

ITCA was established in 1952 as a non-profit corporation to address issues in Indian communities such as voting rights. During the 2002 Election, ITCA engaged in extensive GOTV efforts throughout Arizona. ITCA has a long-standing commitment to protecting the rights of Native American voters in Arizona and has organized GOTV efforts throughout Arizona during Elections. ITCA coordinates with local, state, and Tribal officials to increase voter participation and to conduct voter education. ITCA and the Clinic work together to create training materials, coordinate conference calls and live in-person trainings, and to provide voter education information to Tribal communities. Travis Lane at ITCA serves as the Arizona Native Vote Get Out the Vote Coordinator.

Native American Bar Association of Arizona

The Native American Bar Association of Arizona (NABA-AZ) was founded in 2007 and is a non-profit organization comprised of Arizona attorneys, Tribal court advocates, and judges. NABA-AZ approved the Arizona Native Vote – Election Protection Project as a service project for the organization. NABA-AZ members serve as Election Protection volunteers across the State of Arizona on Election Day.

2016 ELECTION PROTECTION REPORT

In 2016, the Clinic added a research component to the 2016 Native Vote – Election Protection Project.⁶ Students conducted research on in-person early voting access under Section 2 of the Voting Rights Act, compliance with the language minority provisions under Section 203 of the Voting Rights Act, types of Tribal IDs available to Arizona tribal members, and information provided to voters about using Tribal IDs to vote. In addition, the students collected voter turnout data, provisional ballot data, and conducted a survey to obtain data about the research questions.⁷ Findings were presented to the Inter-Tribal Council of Arizona, the Native American Voting Rights Coalition, and the Arizona State Committee of the U.S. Commission on Civil Rights.

This report contains a discussion of the 2016 election protection plan, a summary of the election protection data from the 2016 statewide elections, a summary of provisional ballot and voter turnout data, as well as the research results regarding early voting access in Arizona Tribal communities, Section 203 language access, and Tribal IDs.

2016 Election Protection Plan

During the 2014 General Election, Tribal communities across Arizona experienced many problems with early voting, precinct assignments, voter identification, and equipment problems.⁸ After discussing the 2012 and 2014 issues with the Inter-Tribal Council of Arizona, the 2016 election protection plan identified key issues that could be addressed prior to the 2016 General Election. These included voter registration education and assistance, voter education, creation of training materials, and assistance with early voting requests. The plan also included identification of all polling locations in Indian County and recruitment and training of election day volunteers.

During the 2016 elections, the Clinic operated the Native Vote hotline and recorded incidents from the Presidential Preference and Primary Elections. For the General Election, the Clinic operated the hotline and trained and assigned election protection volunteers to areas in Indian Country.

Gila River Address Issue

During the 2012 General Election, tribal members voting on the Gila River Indian Reservation were turned away from the polls due to IDs failing to match the address on the voter rolls. Tribal members on the Gila River Reservation within Pinal County do not have traditional addresses assigned to them. From discussions with Pinal County, the Clinic learned that voters at Gila River

⁶ Six students participated in a two-semester course on the Native Vote – Election Protection Project during the 2016-2017 academic year. Several students continued working on the project and finalizing the report during 2017-2018 academic year when as students in the Indian Legal Clinic. The students who participated in the research course include Brian Curley-Chambers, Candace French, Dylan Raintree, Allyson Von Seggern, Rani Williams, and Tyson Yazzie. Indian Legal Clinic students Solveig Parsons, Sarah Crawford, and Torey Dolan also assisted in finalizing the report.

⁷ The Clinic obtained data through contact with Arizona Tribes and counties through phone calls and email correspondence. The Clinic submitted requests, under the Freedom of Information Act, to counties that did not respond to initial inquiries for data. Students also consulted county election websites, and county social media sites. Finally, the Clinic drafted the *2016 General Election Survey*. Fourteen of the fifteen counties competed and returned the survey.

⁸ See 2014 Native Vote – Election Protection Final Report, 5-7 (on file with the Indian Legal Clinic).

were assigned their precinct address as their residential address. This meant that no voter's ID would match the residential address on the voter roll.

The Clinic conducted research on how other counties in Arizona treat non-traditional addresses and how they interpret "reasonable match." Apache, Coconino, and Navajo Counties create addresses for their voter system, but they realize that these addresses will not match what a voter has on their ID. These counties realize that an exact match is not required by law and provide flexibility so that voters are not disenfranchised because a computer system cannot accommodate where they live. For example, one-third of Coconino County voters do not have situs descriptions. Since on-reservation voters lack street addresses, the County assigns an address for the voter system. Since the voter registration database does not allow descriptive addresses, the voter is assigned an address in the database identifying that the house lacks a street number, but identifying the precinct.

The Clinic and the Lawyer's Committee contacted Pinal County to request that Pinal County take an approach similar to other rural counties and supported the Gila River Indian Community's request to resolve this issue with Pinal County. The Community sent a letter and met with the Pinal County several times to discuss the challenges and the need to change the interpretation of "reasonable match" in order for voters to cast a regular ballot. The County agreed to a broader interpretation, and included information in its training materials for poll workers.

Voter Registration

The Plan also included voter registration issues identified by the Salt River Pima Maricopa Indian Community and the Pascua Yaqui Tribe. The Clinic participated in registration drives, when requested by Tribes and organizations, including a drive on campus during National Voter Registration Day, to register voters as well as to update and check their voting addresses and early ballot preferences. One of the issues raised by Tribes pre-2016 is that tribal members, primarily elders, were upset that they were on the Permanent Early Voting List (PEVL). Although the law requires that a voter must request to be added or removed to the PEVL in writing, Maricopa County informed the Salt River Pima Maricopa Indian Community that the voters who did not check the box identifying their preference on the voter registration form were automatically defaulted to the PEVL. They further instructed the Community that voters would have to reregister to change the voting preference. The Clinic prepared a template that voters could use to request a change in the PEVL status.

Election Day Data

The Native Vote – Election Protection Project trained volunteers to respond to issues in real time. In addition to assisting voters, volunteers prepared reports identifying voter issues. This report contains data from the 2016 Presidential Preference Election, the Primary Election, and the General Election. In total, Native Vote received 183 incident reports. There were thirty-eight (38) incidents reported during the Presidential Preference Election, ten (10) incidents reported during the Primary Election, and 135 incidents reported during the General Election. This is an increase from the 122 incident reports received during the 2012 General Election.

For the Presidential Preference Election and the Primary Election, data was collected through the Native Vote hotline. For the General Election, the data was collected through the Project's field

volunteers, legal mobile volunteers, and the hotline. Reoccurring issues identified during the 2016 election cycle are:

- Voters turned away without being offered a provisional ballot;
- Voters dropped from the rolls or placed in the wrong precinct;
- Lack of adequate accessibility for disabled or elderly voters;
- Lack of education on voter processes and protocols;
- Lack of poll worker training;
- Machine malfunction;
- Address issues/Voter ID issues;
- Voter confusion; and
- Voter Intimidation.

Incident Reports by Type

In order to assess the common themes across incident reports, the Clinic assigned each incident report one or more of the following designations for each election: voter registration, voter identification, voter intimidation and electioneering, polling location, misinformation, technical, timing, accessibility, and voter confusion. Some incidents fall under more than one category. Thus, in the following analysis, some incidents will be double-counted, because they crossed two or more issues. A description of each incident and its designation is included in Appendix I.

Native Vote identified 132 polling locations on or near Tribal lands. The incident data collected by the Project is limited to information received on the hotline, and data collected from volunteers located at the twenty-two polling locations and thirteen reservations with volunteers.

Voter Registration

Incidents qualifying as voter registration issues include instances of voters not being on the voting rolls, being dropped from the voter rolls, being moved to inactive or suspense lists, or incidents where a voter's registration was not up to date. In the Presidential Preference Election, there were ten (10) incidents related to voter registration, in the Primary Election there were no calls to hotline regarding this issue, and in the General Election there were forty-two (42) incidents. In total, there were fifty-two (52) reported incidents related to voter registration issues.

Presidential Preference Election. In Arizona, about a third of registered voters are independent. In state primary elections, voters who are not registered with a recognized political party can select which ballot type s/he would like to vote. However, the Presidential Preference Election is a closed election, and independent voters must change their voter registration in order to participate in this election. This causes confusion. In the Presidential Preference Election, of the ten (10) incidents related to voter registration six (6) calls specifically pertained to voters inquiring about the requirements to vote in a Presidential Preference Election. Many voters thought that they were being unlawfully turned away because they were not affiliated with a party. One voter in Maricopa County verified her voter registration the night before the election but was told that she could not vote because she was not "on the appropriate roster."

General Election. Native Vote received reports of eight (8) Native American voters who were listed as "dropped" from the voter rolls. At least another eight (8) voters faced problems that were

either caused or likely caused by address issues. The issue of dropped voters spanned Navajo, Graham, Gila, and Maricopa Counties. For example, a voter went to San Carlos precinct and was told he was not registered there, but was told to go try Peridot. Peridot also told him he was not registered there. The Voter Activation network (VAN) showed him as “dropped” within thirty (30) days prior to the election. He was advised to ask the precinct to look on the inactive list. If he was not on the inactive list, he was told to ask for a provisional ballot. When he went back in, he was told he could not vote and the worker told him he could not get a provisional ballot. The volunteer offered to go in with him to get a provisional ballot, but the voter wanted to move on. He did not vote.

A volunteer called the hotline to report that the Hondah precinct in Navajo County was turning voters away and telling them that they had to vote in a different precinct. According to the inspector, it was because either there was an issue with the addresses matching so the County had dropped the voters from the rolls, or people registered at the Arizona Motor Vehicle Division (MVD), and the MVD was not completing registrations.

A voter at Komatke precinct in Maricopa County reported that she was told by poll workers that she was not on the voter roll, yet her voter registration card indicated she was at the right precinct. The voter explained that she had received voting information with an incorrect spelling of her last name. She called the registrar to correct the spelling, but the County’s second mailing to her also contained the incorrect spelling. She called again and received a third voter registration card with the correct spelling. She tried all spellings at the polls, but was given a provisional ballot. She mentioned that she received early ballots to the first two incorrect spellings of her name, but she did not complete them. The field volunteer reported another voter at this precinct also received voting information with an incorrect spelling.

Voter Identification

Voter ID issues include voters not having sufficient ID, valid ID being rejected, or ID addresses not matching the address on the voter roll. In the Presidential Preference Election, there were zero incidents related to voter identification, in the Primary Election there was one (1) incident, and during the General Election there were nine (9) incidents related to voter identification.

Primary Election. A voter reported that a polling location in Apache County was not checking identification.

General Election. Nine (9) incident reports stemmed from issues with voter identification. Of these incident reports, three (3) related to address issues.

There was a report that Bylas precinct in Graham County denied ballots to some voters due to lack of ID. As the San Carlos polling location in Gila County, several voters were denied ballots for lack of ID. The voters were told they needed a voter registration card. The hotline called the on-call attorney for the San Carlos Apache Tribe and asked him to call the county elections office. To resolve this issue, the on-call attorney advised the county officials of the problem and requested that the poll workers appropriately apply the ID requirements.

There was at least one incident regarding physical and mailing addresses. Poll workers gave a voter at Honda precinct in Maricopa County a provisional ballot because the rolls had the voter's physical address, and her identification had her P.O. Box. The voter rolls should have both the physical and mailing addresses, especially for voters who live in Indian Country who do not receive mail at their homes.

Voter Intimidation and Electioneering

Voter Intimidation and Electioneering is a combined category. Voter intimidation includes incidents where voters were intimidated, harassed, or made uncomfortable while voting due to the actions of another. Electioneering incidents include those involving improper campaigning within the 75-foot zone. In the Presidential Preference and Primary Election, there were no incidents of voter intimidation or electioneering reported.

General Election. Native Vote received four (4) reports documenting voter intimidation or electioneering. A field volunteer reported campaigning efforts for a school board candidate at the San Carlos polling precinct. At Guadalupe in Maricopa County, a field volunteer reported that an individual was removed from the polling location for taking pictures of a blind voter who was receiving assistance. A field volunteer also reported a Border Patrol van outside of the Guadalupe precinct polling site that stayed for approximately five (5) minutes.

Polling Location

This category includes issues relating to voters trying to determine their polling location, voters being told they are at the wrong polling location or being redirected to another polling location, or issues where a specific polling location is not following the law properly or consistently giving voters misinformation.

Presidential Preference Election. During the Presidential Preference Election, Maricopa County significantly reduced polling locations, resulting in only sixty (60) polling locations being open on election day. While none of the five reservation locations were closed, the Guadalupe precinct was closed for Pascua Yaqui voters. Four (4) voters called to inquire about polling locations.

Primary Election. During the Primary Election, two (2) voters called to inquire about their polling location.

General Election. During the General Election, there were forty-one (41) incidents relating to polling locations. Of these, thirteen (13) voters either tried to vote out-of-precinct or inquired as to whether their vote would be counted out-of-precinct. For example, a voter registered in Navajo County was located in Phoenix on Election Day and could not make it back to Navajo before the polls closed. He called the hotline to see if he could vote in Phoenix. Another voter in Scottsdale was registered in Graham County and called to see if he could vote provisionally in Maricopa County. Four (4) of the reports dealt with address issues affecting at least six (6) voters.

The Maricopa County polling location in Komatke, serving the Gila River Indian Community, experienced issues with precinct assignments. Voters who live in District 6 were assigned to vote in District 7. This was an ongoing issue from the General Election in 2012. The hotline directed

the voters to the correct precinct. Voters left District 6 without voting and some said they were not going to District 7 to vote.

Voters on the San Carlos Apache Reservation were sent back and forth between the polling location at the Housing Authority in Peridot in Graham County and the polling location at Rice Gym in San Carlos in Gila County, with each precinct telling voters that they were not registered in that precinct and not offering them a provisional ballot. Voters were confused with voter centers, and the location of their polling place. This affected at minimum nine (9) identified voters.

Misinformation

Misinformation incidents include voters being told something that is incorrect by the poll workers or poll workers turning voters away from the polls without offering them a provisional ballot or advising them of their right to vote provisionally. During the Presidential Preference Election, there were three (3) incidents of misinformation, two (2) in the Primary Election, and sixteen (16) in the General Election. There were twenty-one (21) incidents of misinformation total.

Presidential Preference Election. In the Presidential Preference Election, three (3) voters were turned away from the polls without being given an opportunity to cast a provisional ballot.

Primary Election. During the Primary Election, a voter called stating that she was given the wrong ballot inconsistent with her party affiliation. When she informed the poll worker of the error, the poll worker refused to give her the proper ballot.

General Election. During the General Election, there were sixteen (16) reported incidents of misinformation. One voter tried to drop off his early ballot and the poll workers would not let him. A field volunteer reported that poll workers were not informing voters that there were two sides to the ballot at the Whiteriver polling location in Navajo County. Multiple voters called the hotline about being denied the right to vote even a provisional ballot, in violation of the Help America Vote Act.

Technical

Incidents involving technical issues primarily have to do with malfunctioning voting equipment or insufficient training of poll workers on how to operate the equipment. There were a total of eight (8) reports affecting multiple voters.

Primary Election. During the Primary Election, Native Vote received a report of technical issues from a voter who called stating that she was not able to vote at 6 am because of technical issues. The polling location was not able to issue ballots. The voter reported that two other people left without voting and there were no paper ballots to vote. The voter was unable to return to the polls and ultimately did not cast a ballot. It is unclear how many voters were affected by this delay.

General Election. Native Vote received seven (7) reports documenting technical issues that impacted voting. At Hondah in Navajo County, a volunteer called Navajo County Elections with concerns regarding machines running out of ballots. The volunteer reported that someone brought ballots over from Pinetop precinct, but that those ballots included issues not relevant to the Hondah

voters. Another Navajo County voter reported machine malfunctions and said that the workers were not offering express ballots. The voter had to wait for over an hour to cast her ballot.

Some poll workers had little experience or training using the technology at the precincts. An Apache County voter said an interpreter working the polls on Primary Election Day had difficulties using the polling tablets, which caused delays. Poll workers told the voter their training was insufficient and attempted to figure out how to work the tablets. Voters were delayed while they waited for volunteers to fix tablet issues.

Timing – Poll Hours and Long Lines

Primary Election. During the Primary Election, a voter in Apache County reported the polling location was not open at 6 am when the voter arrived. The County Recorder confirmed that the polling location was not open and ready for voters. The County had to send people to the polling location to figure out the issues.

General Election. Native Vote received five (5) reports documenting time issues other than those caused by technical delays. For example, a voter reported a one-and-a-half (1 1/2) hour wait time to vote at Pecos Senior Center in Maricopa County, despite a prior settlement that stated the County would guarantee waits no longer than half an hour. Another report documented an incorrect closing time on the San Carlos Indian Reservation in Gila County. A field volunteer reported the polls closed three minutes early. Eight (8) voters arrived at the same time the Marshall called the time. He cut them off in line saying that, according to his clock, they were late. The voters referenced their cell phones showing a couple minutes left. All voters remained in line behind the Marshall. The Marshall finally allowed each voter a chance to vote. The polls closed at 6:57 pm and the last voter in line left the polling place at 8:03 pm.

Accessibility

Incidents of accessibility include polling locations that are not compliant with the Americans with Disabilities Act, did not make temporary available, as well as incidents where voters could not physically reach the polling location.

Presidential Preference. During the Presidential Preference Election, a voter reported going to several polling locations in Maricopa County but not being able to vote due to long lines. The voter stated that his disability prevented him from standing for a significant period of time, and no other options were offered to him. He did not vote due to no accommodations being available to him.

Primary. In the Primary Election, there were three (3) incidents related to accessibility. One voter called because she took her elderly parents to vote at the Steamboat Chapter House in Apache County, but there were no accessible parking spots and the conditions of the parking lot made it difficult to get into the building. The voter reported that not only were her parents unable to vote because they could not safely exit the vehicle and enter into the building, but the voter also observed a van of elders trying to access the building but could not make it across the parking lot with their canes and walkers so they also left without voting. Two (2) incidents pertained to

transportation, where a voter in Apache County and a voter in Pinal County were looking for transportation to their respective polling locations.

General Election. During the General Election, there were two (2) reported incidents of inaccessible polling locations. Two (2) elderly voters at the precinct located at the White River Unified School District Administration building, within Navajo County, had problems accessing the building because there were two steps and no ramp access at the entrance of the building. It took the assistance of other voters to safely enter and exit the building. An elderly voter in a wheelchair had trouble accessing the voting entrance. When the man exited, he wheeled backwards, and a man was there to pick up the back of the wheelchair and ease him to the bottom of the step. Another voter using a walker required the assistance of three people to enter and leave the precinct.

Voter Confusion

Voter confusion encompasses incidents where voters were unaware of their rights, confused about voting procedures or rules, or were unsure of their voter registration status or polling location. When voters called to inquire about their voter registration status or polling location, the Project documented it as voter confusion. In the Presidential Preference Election, there were twenty-two (22) instances of voter confusion, two (2) in the Primary Election, and thirty-nine (39) in the General Election.

Presidential Preference. During the Presidential Preference Election, there were twenty-two (22) instances of voter confusion. Most calls pertained to voter confusion about eligibility to vote in the Presidential Preference Election because many were unaware that you had to be registered with a political party. Other voters called to ask about the location of their polling place.

Primary Election. During the Primary Election, two (2) voters called to inquire about their polling locations.

General Election. During the General Election, there were thirty-nine (39) incidents of voter confusion. Voters regularly called to verify their voter registration or to check their assigned precinct. Five (5) voters were specifically outside of their registered county on election day and unable to vote. One voter asked if she could submit her ballot in Pima County on the Tohono O'odham Nation Reservation when she was registered to vote in Apache County. Another voter was in Scottsdale on election day and wanted to know if he could vote provisionally in Maricopa County.

Provisional Ballots

After the 2016 Election, the Clinic submitted Freedom of Information Act (FOIA) requests to Arizona counties for their records related to provisional and conditional provisional ballots in the 2016 General Election. Fourteen (14) counties responded with data. However, only nine (9) counties provided a breakdown delineating the reasons why they rejected ballots. Approximately 23% of the provisional ballots cast were not counted. The biggest reason for rejecting provisional ballots related to voter registration (68%). Other issues include voters who voted at the wrong precinct, and voters who fail to produce ID. Some provisional ballots were also rejected for lack of signature. Below is a summary of the data; the complete record of findings is available in Appendix II.

Total Provisional Ballots Received	100,098
Total Counted	77,281
Total Rejected and Not Counted	22,817
Reasons for Provisional Ballot Rejection	
Voter Not Registered to Vote	11,266
Registration After Deadline	3,278
Voting at Incorrect Precinct	3,559
Issues Related to Early Voting	770
Lack of Identification	521
Cancelled Registration	521

Voter Turnout

The Clinic also calculated voter turnout for on-reservation voters. As noted in the table below, several factors limited the precision of the count, including the use of superprecincts and the lack of polling places on some reservations. Notwithstanding these constraints, the data demonstrates that voter turnout remains an issue on reservations across Arizona, with half of the Tribal reservations evidencing turnout below fifty percent (50%). Tables detailing all of the on-reservation polling place data is available in Appendix III.

Tribe	Voters Registered	Ballots Cast	Percentage
Ak-Chin Indian Community	410	234	57.07%
Cocopah Tribe*	966	597	61.80%
Colorado River Indian Tribes	5,107	3,319	64.99%
Ft. McDowell Yavapai Nation	551	252	45.74%
Gila River Indian Community	4,427	2,099	47.41%
Havasupai Tribe	129	38	29.46%
Hopi Tribe**	9,346	5,293	56.63%
Hualapai	617	241	39.06%
Navajo Nation**	74,482	40,731	54.69%
Pascua Yaqui Tribe	1,951	974	49.92%
Quechan Tribe*	3,646	2,529	69.36%
Salt River Pima-Maricopa Indian Community	3,581	1,802	50.32%
San Carlos Apache Tribe***	2,377	1,175	49.43%
Tohono O'odham	5,604	3,317	59.19%
Tonto Apache Tribe*	1,747	1,437	82.26%
White Mountain Apache Tribe****	13,119	8,320	63.42%
* Off Reservation Voting ** Navajo County includes a superprecinct with Navajo Nation and Hopi Tribe. *** Incomplete Count **** Navajo County and Gila County reports the total of superprecincts so current numbers are inflated.			

EARLY VOTING ON INDIAN RESERVATIONS

Barriers to Early Voting for Native Americans in Arizona

There are two ways to vote early in Arizona, one is by mail and the other is at an in-person early voting location. Native Americans do not have equal access to early voting in Arizona. Isolating conditions such as language, socio-economic conditions, distance to the polls, lack of home mail delivery, lack of transportation, poorly paved roads, lack of public transportation, and lack of in-person early voting locations impact Native Americans' ability to participate in early voting.

Early voting by mail is not simple for Native American voters. Native Americans are less likely to have mail delivered to their homes, especially when living on tribal lands.⁹ Non-Hispanic whites are 350% more likely to have mail delivered to their homes than Native Americans in Arizona.¹⁰ On-reservation residents often rely on post office boxes that may be a 45-minute to 2-hour drive away.¹¹ The difficulties accessing mail make voting by mail difficult because traveling to the P.O. box to pick up your ballot and then returning it can be an all-day task. Without a car, it may be impossible. Voting an early ballot by mail on-reservation is largely unreliable; thus, early voting by mail is not as accessible for Native Americans living on reservation as it is for off-reservation voters.

Additionally, socioeconomic conditions create challenges for Native American voters seeking to vote in person. Native Americans in Arizona are impoverished at a rate of 35.7% compared to the national rate of 26.8% of Native Americans nationally.¹² Non-Hispanic whites in Arizona experience poverty at a rate of 10.9%. Native Americans are also more likely to work multiple jobs, not have reliable transportation, and lack adequate childcare resources.¹³ Rural on-reservation voters also face the issue of distance to available early voting locations which can turn voting into an endeavor that takes hours as opposed to minutes it can take for off-reservation voters. Additionally, Native Americans are less likely to be able to afford the transportation. This means that Native Americans are less likely to be able to afford transportation to be able to travel to the polls and it can make taking the time off to travel to vote an economic barrier.

These barriers are exacerbated by the fact that reservation communities often do not have the same access to in-person early voting as off reservation. Some Tribes do not have in-person early voting on the reservation and when they do they are often open for fewer days and fewer hours than offered off reservation in person early voting. Without reliable mail and in person polling locations, early voting then becomes difficult.

Further, Native language speakers cannot effectively participate in early voting by mail. In 2016, nine counties were required to provide language assistance. However, it is unclear what measures were taken to provide language assistance to Native American language speakers by mail, if at all.

⁹ *Democratic Nat'l Comm. v. Reagan*, 904 F.3d 686, 754 (9th Cir. 2018) (Thomas dissent), *reh'g en banc granted*, 911 F.3d 942 (9th Cir. 2019)

¹⁰ *Id.*

¹¹ *Id.*

¹² Poverty Rate, MAP AZ Dashboard (2019), available at <https://mapazdashboard.arizona.edu/health-social-well-being/poverty-rate/poverty-rate> (last visited Sep 20, 2019).

¹³ *DNC v. Reagan*, 904 F.3d at 704.

Thus, the lack of in-person early voting locations, coupled with the lack of effective assistance by mail deprives Native Americans of equal opportunities to participate in early voting as compared to off-reservation, nonIndian voters.

The Right to Early Vote in Arizona

The Voting Rights Act (VRA) passed in 1965 in order to enforce the rights guaranteed by the Fifteenth Amendment. Section 2 of the VRA prohibits practices and policies that deny or abridge a U.S. citizen's right to vote based on race, color, or language minority group. Section 2 prohibits any voting practice that affords voters in a protected class "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."¹⁴ Early voting is one of the ways that states and counties can ensure equal opportunity in voting. However, early voting is not always easy for Native American voters.

Under Arizona law, early voting shall be provided for any election called pursuant to state law and any qualified voter may vote by early ballot.¹⁵ For the 2016 General Election, all fifteen Arizona counties offered early voting. Under Arizona law, early voting begins no earlier than twenty-seven days before an election.¹⁶ During the 2016 General Election, the early voting period began on October 12, 2016, and ended on or before November 7, 2016, depending on the county.¹⁷

Currently, twenty-two (22) Tribal nations and twenty (20) reservations are situated within the boundaries of Arizona.¹⁸ Tribal land holdings constitute 27.7% of the total land base of the Arizona.¹⁹ The Tribal communities located within Arizona vary in culture, language, and history. Some communities such as the Salt River Pima-Maricopa Indian Community are located near major metropolitan areas, while others are located in rural locations. For example, the Havasupai Tribe is located at the bottom of the Grand Canyon in a community that visitors and residents can only access by helicopter or hiking. Thus, the opportunities and barriers to equal access to early voting vary significantly by Tribe.

Early Voting in Indian Country Data

The Clinic compiled data from surveys sent to each county elections department and recorder's office, phone calls with county elections departments and recorder's offices, Freedom of Information Act requests, and county websites. Appendix IV provides the early voting opportunities offered by each county in Arizona. Specifically, the report outlines the number of early voting locations in the county, the availability of early voting locations on each reservation versus locations off-reservation, and the distances reservation voters had to travel to access their nearest polling places compared to off-reservation voters.

¹⁴ 52 U.S.C. § 10301(b) (Westlaw through Pub. L. No. 115-90).

¹⁵ ARIZ. REV. STAT. ANN. § 16-541(A) (2017).

¹⁶ ARIZ. REV. STAT. ANN. § 16-542(C) (2017).

¹⁷ *Apache Cty. Early Voting*, APACHE CTY. ARIZ. (July 21, 2016), available at <http://www.co.apache.az.us/apache-county-early-voting/> [<https://web.archive.org/web/20160731031441/http://www.co.apache.az.us/apache-county-early-voting/>].

¹⁸ The San Juan Southern Paiute do not have a reservation. The Pueblo of Zuni's off-reservation trust land is not residential.

¹⁹ *Forest Serv. Nat'l Res. Guide to Am. Indian and Alaska Native Rel.: App. D*, FS-600 (Apr. 1997), <https://www.fs.fed.us/people/tribal/Tribexd.pdf>.

Based on the data gathered for the 2016 General Election by the Clinic, most Arizona counties are not providing early voting polling locations to voters residing on Tribal reservations comparable to early voting locations outside of Indian Country; however a few do provide early voting at the same rate it provides to off-reservation voters. There were eighty-nine (89) total early voting locations for the 2016 General Election. Twenty-three (23) of those were located on-reservation, and sixty-six (66) were located off-reservation. Voters residing on reservations are required to travel longer distances to early voting locations than non-reservation voters. For example, voters from reservations with large land bases such as the Navajo Nation and Tohono O'odham Indian Reservations, are often required to drive more than sixty (60) miles to the closest permanent early voting site. Reservation voters from remote locations are required to travel from remotest locations to vote if they miss the one-day early voting opportunity offered by the county. Reservation voters also have limited locations and time periods to participate in early voting. For example, most of the counties offer early voting from mid-October until the Friday prior to Election Day which is roughly three weeks, while most reservation voters are limited to approximately one to three days of early voting.

Further research is needed to understand the basis of early voting decisions and whether one-day early voting locations are publicized. Early voting access has improved in some areas, but Tribes and counties can communicate with each other better on how to improve current access issues. The research suggests that Tribal communities aspiring to bring early voting opportunities onto the reservation establish and maintain working relationships with the county recorder offices and participate in Native American voting initiatives such as those offered by the Inter Tribal Council of Arizona.

Early Voting by Tribe

Navajo Nation

The Navajo Nation is the largest reservation in the United States, and the reservation boundaries are within Apache, Coconino, and Navajo County.

Apache County is the sixth largest county in the United States, and the longest county in the country, comprising over 11,218 square miles.²⁰ According to the Apache County, "two-thirds of the population, and over one-half of the land area is comprised of the Navajo Nation."²¹ Apache County offered two (2) early voting locations on the Navajo Nation.²² However, the northern part of the county does not have any in-person early voting locations. Voters in Teec Nos Pos, for example, must travel ninety-five (95) miles one way, over an hour and a half, to reach the closest early voting location in Chinle. Dennehotso to Chinle are also long drives, over seventy-seven (77) miles each way, approximately one hour and twenty minutes. The recorder's office offers in-

²⁰ Welcome to Apache County, Apache County website, available at <https://www.co.apache.az.us/home-page/>; Census Bureau, Quick Facts Apache County, AZ, available at <https://www.census.gov/quickfacts/apachecountvarizona>.

²¹ Welcome to Apache County, Apache County website, available at <https://www.co.apache.az.us/home-page/>.

²² Apache Cnty. Early Voting, Apache County, AZ (July 21, 2016), <http://www.co.apache.az.us/apache-county-early-voting/> [<https://web.archive.org/web/20160731031441/http://www.co.apache.az.us/apache-county-early-voting/>]; Survey response from Apache Cnty. to the Indian Legal Clinic (2016) (on file with the Indian Legal Clinic.).

person early voting in St. Johns, requiring off-reservation voters in Eager and Springerville to travel approximately thirty (30) miles to participate in in-person early voting.

Coconino County is the second largest county in the United States comprising 18,661 square miles, and 16.4% of the total land base in Arizona. In 2016, Coconino County offered two (2) early voting locations on the reservation, one in Tuba City for the entire early voting period, including a Saturday morning, and three mornings in Leupp.²³ The County offered six (6) early voting locations off-reservation for the entire early voting period. While the Page early voting location is located only a few miles from the Lechee Chapter, other voters on the Navajo Reservation must travel over sixty (60) miles one way to participate in early voting. Many voters on the Navajo Nation had to travel further than off-reservation voters to access early voting.

Navajo County provided four (4) early voting locations on the Navajo Nation.²⁴ Two (2) of those locations operated for only one day, for a total of fifteen hours. In Kayenta, early voting was offered the entire early voting period at the Justice of the Peace, as well as two (2) days at the Bashas shopping center. There was also one day of early voting offered at Pinon Bashas and Dilkon Bashas. Early voting locations in Show Low and Holbrook were open for the entire early voting period. Navajo voters in some parts of the Navajo Reservation had to travel considerable distances to access early voting and did not have the same access to early voting as other residents of Navajo County.

Hopi Tribe

The Hopi Reservation is located within Coconino County and Navajo County. There are two villages in Coconino County, with the majority of the Reservation located in Navajo County.

Coconino County did not provide any early voting locations on the Hopi Reservation. However, Hopi voters who reside in the Villages of Upper and Lower Moenkopi, are located only several miles from Tuba City.

Navajo County provided an early voting location on the Hopi Reservation at Circle M Store in Polacca on October 28, 2016 for seven hours. An on-reservation voter from Kykotsmobi Village would have to travel 22 miles to access the early voting location. Off-reservation voters had two early polling locations in Show Low and Holbrook that were open the entire early voting period.

San Juan Southern Paiute

The San Juan Southern Paiute Tribe is located within the boundaries of the Navajo Nation Reservation in Apache, Coconino and Navajo Counties, with an office in Tuba City. Their members in Arizona reside in and around the communities of Hidden Springs, Rough Rock, Willow Springs, Tuba City and Cow Springs on the Navajo Reservation. Coconino County offered two (2) early voting locations on the Navajo Reservation, including a location in Tuba City for the entire early voting period as well as a Saturday morning early voting opportunity. This location served the San Juan Southern Paiute Tribal members in Willow Springs and Tuba City, is only

²³ Early Voting Sites for the 2016 Elections (2016) (on file with the Indian Legal Clinic).

²⁴ Navajo Cty. Early Voting Sites 2016 Nov. 8th Gen. Election, Navajo County, AZ (Aug. 21, 2016), *available at* <https://web.archive.org/web/20160821145652/http://www.navajocountyaz.gov:80/Departments/Elections/Votr-Information/Early-Voting-Sites>.

twenty (20) miles) from Hidden Springs, and is approximately thirty (30) miles from Cow Springs. Rough Rock is approximately thirty (30) miles to Chinle in Apache County.

Kaibab Paiute Tribe

The Kaibab Paiute Reservation is located in Coconino County and Mohave County. The Coconino County portion of the Kaibab Paiute Reservation does not have any residents. Mohave County provided three in-person early voting locations for the entire early voting period. The closest early polling locations for the Kaibab Paiute in Mohave County was located in Bullhead City, Arizona 285 miles away. This required a five to seven hour trip around the Grand Canyon to at the closest in-person early voting location.

Havasupai Tribe

The Havasupai Reservation is located in Coconino County at the bottom of the Grand Canyon. The County provided an in-person early voting location for one day in “middle of the village” described as “where the community gathers.”²⁵ Havasupai Tribal leaders expressed that there was not a need for an additional day of early voting. Traveling in and out of the reservation requires a helicopter, horse, or a journey by foot so it is difficult for voters to travel to off-reservation early polling locations to vote in person.

Hualapai Indian Tribe

The Hualapai Indian Reservation is located in Mohave, Yavapai, and Coconino Counties. Reservation residents primarily live in and near Peach Springs in Mohave County. Mohave County did not provide any early in-person early voting locations on the Hualapai Reservation. The closest early voting location to the Reservation was in Kingman, Arizona, which is forty-seven (47) miles from Peach Springs.

Fort Mojave Indian Tribe

The Fort Mojave Reservation is located Mohave County. Mohave County did not provide any in-person early voting locations on the Fort Mojave Reservation. The Tribe is located in Needles, Arizona, approximately nine (9) miles away from the closest in person early voting location in Bullhead City.

Yavapai-Prescott Indian Tribe

The Yavapai-Prescott Indian Tribe is located within Yavapai County. Yavapai County did not provide in-person early voting on the Reservation; however, early voting was offered the entire early voting period in Prescott.²⁶ The early voting location was approximately one mile from the Tribal headquarters.

Yavapai Apache Nation

The Yavapai Apache Nation is located in Yavapai County. The County provided an early voting polling location at the Yavapai Apache Community Center in Camp Verde.

²⁵ Telephone Interview with Havasupai representatives, Havasupai Tribe (Oct. 17, 2016).

²⁶ Early Voting: Frequently Asked Questions, Yavapai Cty. Elections Voter Registration, *available at* <http://www.yavapai.us/electionsvr/early-voting> (last visited Feb. 6, 2017).

Tonto Apache Tribe

The Tonto Apache Reservation is located on eighty-five (85) acres near Payson in Gila County. Gila County did not provide an in person early polling location on the Tonto Apache Reservation. However, the Reservation is located a little over a mile from the Recorder's Office in Payson, and this location was open the entire early voting period.

White Mountain Apache Tribe

The White Mountain Apache Tribe is located on the Fort Apache Reservation in Gila, Navajo, and Apache Counties. The Reservation comprises 1.6 million acres.

Gila County provided one special early voting location on the Fort Apache reservation, which was open only for one day for a total of four hour at Canyon Day Jr. High School.²⁷ Some reservation voters would need to travel approximately twenty-seven (27) miles in order to cast an early ballot in-person on the reservation polling location.

Navajo County provided one early voting location on the Fort Apache Reservation in the town of Whiteriver, the most populated White Mountain Apache community. This location was open only for one day, for seven (7) hours. While this location was accessible to voters in Whiteriver, on-reservation voters living in McNary would have to travel twenty-two (22) miles to Whiteriver in the middle of the week to access that polling location. Off-reservation, early voting locations in Show Low and Holbrook were open the entire early voting period.

Apache County did not provide early voting opportunities on the Fort Apache Reservation. White Mountain Apache voters who live in McNary had to travel sixty (60) miles one way to participate in early voting, twice the distance of voters from the off-reservation towns of Springerville and Eagar.

San Carlos Apache Tribe

The San Carlos Apache Reservation is comprised of 1.8 million acres of land within Gila, Pinal, and Graham Counties. No one lives on the Pinal County portion of the Reservation.

Graham County provided one early voting location in Bylas on the San Carlos Apache Reservation, which was open for one day for four (4) hours total. Within the reservation, voters from Gilson Wash and Peridot had to travel thirty (30) miles and twenty-three (23) miles respectively to reach the early voting location in Bylas. Off-reservation voters traveled eight (8) to seventeen (17) miles to the early voting location in Safford, which was open the entire early voting period.

Gila County offered one early voting location on-reservation in San Carlos for the San Carlos precinct. This location was open for a total of four (4) hours. Two early voting locations, Payson and Globe, offered early voting the entire early voting period. Globe is about twenty (20) miles from San Carlos.

²⁷ Gila County, Early Voting, (Nov. 6, 2016).

Colorado River Indian Tribe

The Colorado River Indian Tribe's Reservation is located in La Paz County in Arizona, as well as California. La Paz County offered two (2) early voting locations on the Colorado River Indian Reservation in Parker and Poston. Most of the Tribe's on-reservation population resides in or near Parker, the most populated community, and Poston. The early voting location in Parker was open the entire early voting period, providing access to tribal voters the entire early voting period.

Fort McDowell Yavapai Nation

The Fort McDowell Yavapai Nation Reservation is located in Maricopa County. Maricopa County did not offer any in-person early voting on the Fort McDowell reservation. The closest in person early voting location is twenty-three (23) miles one way from the Fort McDowell Reservation in Fountain Hills. Maricopa County had twenty-five (25) off-reservation early voting locations open for nearly the entire early voting period.

Salt River Pima Maricopa Indian Community

The Salt River Pima-Maricopa Indian Community Reservation is within Maricopa County. Maricopa County did not provide an early voting location on the Salt River Pima Maricopa Indian Reservation. Tribal members could early vote in the city of Mesa, approximately seven (7) to eight (8) miles away, or the City of Scottsdale, approximately four (4) miles away.

Tohono O'odham Nation

The Tohono O'odham Nation Reservation comprises 11,243 square miles in Pima, Pinal, and Maricopa Counties and has eleven (11) districts.

Pima County provided four (4) early voting locations on the Tohono O'odham Reservation. One location was open for five days, two locations were open for two days, and one location was open for one day. Each of these locations were open during business hours during the work week for seven or eight hours a day. Three (3) off-reservation early voting locations were offered for the entire early voting period, while two (2) were offered most of the period, and one was offered one week. Three (3) of the off-reservation early voting locations offered emergency voting for voters to access early voting after the early voting period and before the election.

Pinal County did not provide any early voting locations on the Tohono O'odham Reservation. Voters in the most populated Tohono O'odham town in Pinal County, Chuichu, had to travel approximately twelve (12) miles away to vote in person in Casa Grande, Arizona.

Maricopa County did not provide any on reservation in-person early voting opportunities on the Tohono O'odham Reservation. A voter living on that portion of the Tohono O'odham Reservation had to travel 116 miles one way to access in-person early voting.

Pascua Yaqui Tribe

The Pascua Yaqui Tribe's Reservation is located in Pima County and the Tribe has other villages in Pima, Pinal, and Maricopa Counties, including the tribal community in Guadalupe, Arizona. Pima County provided an early voting location on the Pascua Yaqui Reservation. That location was open for four (4) days during the early voting period and was open for eight (8) hours each day.

In Maricopa County, there were no early voting opportunities in the Town of Guadalupe. The nearest early voting location was six (6) miles away in Tempe, Arizona.

Quechan Tribe

The Quechan Reservation is located in Yuma County, Arizona and in California. Although the County did not provide an early voting location on the Quechan Reservation in Arizona, the in-person early polling location was three (3) miles from the reservation at the Recorder's Office. Yuma County provided one early voting location in Yuma that was open the entire early voting period.

Cocopah Tribe

The Cocopah Reservation is located in Yuma County. Although Yuma County did not provide an early voting location on the Cocopah Reservation, there was one early voting location in the county and it was located ten (10) to twelve (12) miles from the Reservation.

Ak-Chin Indian Community

The Ak-Chin Indian Reservation is located in Pinal County. Pinal County did not provide an early voting location on the Ak-Chin Indian Reservation. The nearest in-person polling location was approximately twenty-four (24) miles away in Casa Grande. Pinal County had three early voting locations open for the entire early voting period.

Gila River Indian Community

The Gila River Indian Community Reservation is located primarily within Pinal County with a portion of the reservation located in Maricopa County.

Pinal County provided one day of early voting on the Gila River Indian Community Reservation in response to a request from Governor Stephen Lewis. The location was located in Sacaton at the Community's Governance Center.

Maricopa County did not have any early voting locations on the Gila River Indian Reservation. The closest early voting location for Reservation residents was located South Mountain Community College, about fifteen (15) miles from the District 6 Service Center.

TRIBAL IDENTIFICATION CARDS

Under Arizona law, the Secretary of State (Secretary) or the Secretary's designee is the chief state election officer.⁵³ According to Section 16-452(A) of the Arizona Revised Statutes, after consulting with the Arizona counties' board of supervisors, the Secretary of State must set forth and adopt an instructions and procedures manual for the conduct of elections. The Governor and Attorney General must approve the manual.⁵⁴

Section 16-579(A)(1)(a) of the Arizona Revised Statutes allows a qualified elector to produce a "tribal enrollment card or other form of tribal identification" to an election official at an election. According to the Manual, an elector who provides an acceptable form of identification – either from List 1 (one form of identification containing photograph, name, and address), List 2 (two forms of identification without a photograph but containing name and address), or List 3 (two forms of identification, one of which contains a photograph, and one of which contains a name and address) – must be provided a regular ballot.⁵⁵ If an elector does not provide sufficient proof of identification (ID), which is from either of the lists, then the poll worker provides the elector with a conditional provisional ballot. The Manual includes "tribal enrollment card or other form of tribal identification" in all three Lists.⁵⁶ The Manual states that an ID is valid unless shown on its face that it has expired.

The types of IDs acceptable at the polls was expanded as a result of a settlement agreement reached in litigation filed by Tribes challenging Arizona's voter ID law. Acceptable forms of Tribal ID include, but are not limited to documents issued a Tribe, Nation, Community, Band Tribal subdivision or Bureau of Indian Affairs including, (1) a Tribal ID or enrollment card; (2) a Certificate of Indian Blood; (3) a Tribal voter ID card (for use in Tribal elections); (4) a home site lease, permit, or allotment; and (5) a grazing permit or allotment.

The Elections' Manual also contains a separate provision for Native American electors. If an elector, who identifies himself or herself as a member of a federally-recognized Tribe, does not provide an acceptable proof of ID under either of the three lists, he or she is to be provided a provisional ballot if he or she presents one form of Tribal ID containing the name of the elector. If the Native American elector is unable to produce an acceptable form of ID under this provision, then he or she must vote with a conditional provisional ballot.⁵⁷

While Tribal IDs are listed in the materials that can be used to obtain a regular ballot, it is unclear if any counties share with voters that they may vote provisionally with a Tribal ID that lacks a photo and/or an address. While some counties train their poll workers to accept Tribal IDs that

⁵³ ARIZ. REV. STAT. ANN. § 16-142 (2017).

⁵⁴ *Elections Procedures Manual*, ARIZ. SEC'Y OF STATE (June 2014), https://azsos.gov/sites/default/files/election_procedure_manual_2014.pdf.

⁵⁵ *Id.* at 144.

⁵⁶ *Id.*

⁵⁷ *Id.* at 145.

lack a photo and/or an address, it is unclear how many counties train their poll workers on this option.

Nearly all Tribes in Arizona issue a Tribal ID card that has the Tribal member's photo and full name. However, Tribes differ on whether they include the Tribal member's address, whether the identification card expires, and whether there is a fee associated with obtaining a card.

Review of the Arizona statutes and the Manual suggest that in order for federally recognized Tribal members to vote with their Tribal ID cards, Tribal governments should consider making Tribal enrollment/identification cards available which contain a name, a photograph, and an address to vote in state and federal elections. In 2011, the Navajo Nation started offering photo IDs.⁵⁸ However, the IDs are only issued in one location, and not many Navajo citizens have taken advantage of the new IDs. Below is a summary of Tribal IDs issued by Arizona Tribes. Notwithstanding, most Tribes issue some form of documentation that can be used to obtain a provisional ballot.

⁵⁸ Noel Lyn Smith, First Tribal ID cards issued, Navajo Times (Nov. 17, 2011).

Tribe:	<u>Tribal ID?</u>	<u>Photo?</u>	<u>Full Name?</u>	<u>Address?</u>	<u>Does the Card Expire?</u>	<u>Fees and Relative Access</u>
Ak-Chin Indian Community	Yes	Yes	Yes	Yes	No	First card is free, \$5.00 replacement fee
Cocopah Indian Tribe	Yes	Yes	Yes	Yes	Yes, every two years.	First card is free, but renewals and replacements cost \$10.00
Colorado River Indian Tribes	Yes	Yes	Yes	Yes	No	Free
Fort Mojave Indian Tribe	Yes	Yes	Yes	Yes	Yes	First card is free, including if cardholder renews before expiration date; otherwise \$5.00 fee
Quechan Indian Tribe	Yes	Yes	Yes	Yes	Yes, every 4 years. (Possible change to previous 8 year expiration)	\$15 for Adults and \$10 for Seniors
Gila River Indian Community	Yes	Yes	Yes	No	No	\$8.00 fee
Havasupai Tribe	Yes	Yes	Yes	No	Yes, every two years	First card is free, \$10.00 replacement fee
Hopi Tribe	Yes	Yes	Yes	No	Yes, every two years	First card is free, \$15.00 replacement fee

Hualapai Indian Tribe	Yes	Yes	Unknown	Unknown	Yes	First card is free, replacement fee is \$10.00
Kaibab Paiute	Yes	Yes	Yes	Yes	No	None
Navajo Nation Certificate of Indian Blood	Yes	No	Yes	No	No	None On 8 ½ x 11 sheet of paper
Navajo Nation Enhanced Card ⁵⁹	Yes	Yes	Yes	Yes	Yes, every four years	\$17.00 fee
Pascua Yaqui ID Card	Yes	Yes	Yes	Yes	Yes, every four years	First card is free, otherwise \$5.00 fee for first replacement and \$10.00 fee for subsequent replacements
Pascua Yaqui Enhanced Card (MOU with U.S. Customs Enforcement)	Yes	Yes	Yes	Yes	Yes, every eight years	\$30.00 fee for adults, \$20.00 fee for minors
Salt River Pima-Maricopa Indian Community	Yes	Yes	Yes	Yes	No	No fees
San Carlos Apache Tribe	Yes	Yes	Yes	Yes	Yes, every ten years	\$15.60 fee
San Juan Southern Paiute	No	----- ---	----- --	-----	-----	-----
Tohono O'odham	Yes	Yes	Yes	No	No	First card is free, \$10.00 replacement fee

⁵⁹ There are several security features on the card including a holographic seal of the Navajo Nation and a machine-readable zone, which contains the cardholder's personal information in a format that can be scanned by border agents to cross into Canada and Mexico. Though this card is available to Navajo Nation members, many do not opt-in to this option. Many members use their Certificate of Degree of Indian Blood as a form of federal identification.

Tonto Apache	Yes	Yes	Yes	Yes	No	First card is free, \$10.00 replacement fee
White Mountain Apache Tribe	Yes	Yes	Yes	Mailing address only	No	First card is free, \$5.00 replacement fee
Yavapai-Apache Nation	Yes	Yes	Yes	Yes	No	One free card per year
Yavapai Prescott Indian Tribe	Unknown, declined to answer	----- ---	----- --	-----	-----	-----

SECTION 203 OF THE VOTING RIGHTS ACT

In 1975, Congress found that language barriers posed a significant roadblock to the political process for Native Americans, Alaska Natives, Asian Americans, and Spanish-speaking citizens. Consequently, Congress amended the VRA to broaden the scope of voter protection to include these groups as “language minorities” under Section 203 of the VRA.⁶⁰ Specifically, Section 203 mandates “[w]henver any State or political subdivision [covered by the section] provides registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.”⁶¹

Section 203 imposes an affirmative duty on covered jurisdictions to translate all voting materials into the covered minority language. Section 203 employs a two-part formula to determine which jurisdictions and what minority languages Section 203 covers. First, the limited English proficient voters of a single language minority group must (1) number more than 10,000, (2) comprise more than five percent (5%) of all voters in the jurisdiction, or (3) comprise more than five percent (5%) of all American Indians of one language group living on one reservation, hereinafter the “Reservation Trigger.”⁶² Second, the illiteracy rate of the limited English proficient voters’ must exceed the national illiteracy rate.⁶³ The formula employs data provided by the American Community Survey (“ACS”), which the Census Bureau gathers every five (5) years.⁶⁴

After a jurisdiction is determined to be subject to Section 203, that jurisdiction is required to take reasonable steps to ensure that all voting materials are designed to effectively inform the language minority group of every aspect of the voting process.⁶⁵ All voting materials means “registration and voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots...”⁶⁶ For Native American languages that are historically unwritten, all information should be orally conveyed. Specifically the federal regulations require “general announcements, publicity, and assistance... in oral form.”⁶⁷ It is the duty of the covered jurisdiction to determine the number of Native “helpers” to provide effective language assistance.⁶⁸ An exacting translation is necessary, and it is the duty of the jurisdiction to determine which form or dialects will be most effective.⁶⁹ Finally, Section 203 coverage applies to the “primary and General Elections, bond elections and referenda, and to elections of each municipality, school district or special purpose district within the designated jurisdiction.”⁷⁰

⁶⁰ See generally Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, H.R. REP. 109-478, 9, 2006 (quoting H.R. REP. NO. 94-196, at 7, 16 (1975)).

⁶¹ 52 U.S.C. § 10503(c) (2012) (Westlaw through Pub. L. No. 115-90).

⁶² 52 U.S.C. § 10503(b)(2)(A).

⁶³ 52 U.S.C. § 10503(b)(2)(A)(ii).

⁶⁴ 52 U.S.C. § 10503(b)(2)(A).

⁶⁵ Purpose; standards for measuring compliance, 28 C.F.R. §§ 55.2(b)(1), (2) (2018).

⁶⁶ Statutory requirements, 28 C.F.R. § 55.3 (2018).

⁶⁷ Language used for oral assistance and publicity, 28 C.F.R. §55.13 (2018); see also Oral assistance and publicity, §55.20 (2018).

⁶⁸ Oral assistance and publicity, 28 C.F.R. §55.20 (2018).

⁶⁹ Determining the exact language, General, 28 C.F.R §55.11 (2018).

⁷⁰ Types of elections covered, 28 C.F.R §55.10 (2018).

This section identifies which Arizona Counties must provide language assistance to Native American voters, and details the steps Arizona Counties took to fulfill their legal obligations for language assistance in the 2016 Election.

During the 2016 election cycle, Section 203 required nine of the fifteen counties to provide language assistance to Native American voters on eight reservations: the Navajo language in Apache, Coconino, and Navajo Counties; the Pueblo language in Apache County; the Hopi language in Coconino and Navajo Counties; the Yuman language in Coconino, Mohave, Yavapai, and Yuma County; the O’odham language in Maricopa, Pima, and Pinal Counties; and the Yaqui language in Pima County.⁷¹ The table below breaks down the covered languages and the reservations that triggered Section 203 during the 2016 Election.

2011 Census Bureau Section 203 Determinations As Used During the 2016 Election		
County	Language	Reservation Trigger
Apache	Navajo	Navajo Reservation
	Pueblo	Zuni Reservation and Off-Reservation Trust Land
Coconino	Yuma	Havasupai Reservation
	Hopi	Hopi Reservation
	Yuma	Hualapai Indian Reservation
	Navajo	Navajo Reservation
Maricopa	Tohono O’odham	Tohono O’odham Reservation
Mohave	Yuma	Hualapai Indian Reservation
Navajo	Hopi	Hopi Reservation
	Navajo	Navajo Nation
Pima	Yaqui	Pascua Yaqui Reservation
	Tohono O’odham	Tohono O’odham Reservation
Pinal	Tohono O’odham	Tohono O’odham Reservation
Yavapai	Yuma	Hualapai Reservation
Yuma	Yuma	Cocopah Reservation

⁷¹ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198, 63603 (Oct. 13, 2011).

Section 203 requires “any State or political subdivision” to provide voting assistance “or other materials . . . in the language of the applicable minority group as well as in the English Language.”⁷⁴ A county “that contains all or part of an Indian reservation, [where] more than 5 percent of the American Indian citizens of voting age with in the Indian reservation are members of a single language minority and are limited-English proficient must provide language assistance.”⁷⁵ In Arizona all Native American language assistance determinations came as a result of this Reservation Trigger.⁷⁶ Counties are responsible for deciding whether languages covered by Section 203 should be classified as written and adjusts their language assistance obligations accordingly.⁷⁷ Counties in Arizona covered for Native American languages classify the language group in their jurisdiction as historically unwritten.

Under Section 203, all election material provided in the English language must also be provided in the covered minority language.⁷⁸ While all materials do not have to be written for historically unwritten languages, this does not release covered jurisdictions from their obligations. In the District of Arizona, the United States Department of Justice filed a complaint against the “State of Arizona, members of the Apache County Board of Supervisors, a majority of whom are Navajo, and the members of the Navajo County Board of Supervisors, two of five of whom are also Navajo for failing to provide oral instructions, assistance, or other information relating to registration and voting in the Navajo language.”⁷⁹ Pursuant to the resulting consent decree, the Counties had to develop a Navajo Language Election Information Program. The purpose of the consent decree was to ensure the dissemination of election-related information.⁸⁰ The consent decree was to remain in effect for four years with a possible two year extension upon review.⁸¹

The consent decree imposed a number of requirements on the Counties, including mandates to obtain assistance from the Navajo Nation Election Administration (NNEA), employ two elections outreach workers, increase the number of available Navajo-speaking deputy registrars, disseminate election information through public service announcements on the radio, plan presentations with appropriate audio and visual aids, and ensure bilingual assistance at polling locations.⁸² Many of these requirements involved the creation of written translations for outreach worker and registrar training.⁸³ Although the consent decree is no longer in effect, Apache, Navajo, and Coconino continue utilizing many of the language assistance tools and practices developed during that time.

The NNEA plays a significant ongoing role in ensuring that Navajo voters have access to language assistance. The NNEA works with eleven (11) counties in three (3) states – including Apache, Navajo, and Coconino Counties – to supply translated election material in both written and

⁷⁴ 52 U.S.C. § 10503(c) (Westlaw through Pub. L. No. 115-90).

⁷⁵ 52 U.S.C. § 10503(c).

⁷⁶ 52 U.S.C. § 10503(b)(2)(A)(III).

⁷⁷ Language used for written material, 28 C.F.R. §55.12(c) (2018); *see also* Purpose; standards for measuring compliance, 28 C.F.R. §55.2(c).

⁷⁸ 52 U.S.C. § 10503(c).

⁷⁹ Consent Decree, U.S. v. Ariz., CIV 88-1989 PHX EHC at 18 (D. Ct. Ariz. 1989) (on file with author) [hereinafter Consent Decree].

⁸⁰ *Id.* at 5.

⁸¹ *Id.* at 24.

⁸² *Id.* at 4-17.

⁸³ *Id.* at 4-17.

recorded Navajo language.⁸⁴ The NNEA's biggest success was the compilation of Navajo language glossary (Navajo Glossary) for poll workers and outreach workers.⁸⁵ The Navajo Glossary incorporates differences in the Eastern and Western Navajo dialects.⁸⁶ The NNEA also distributes additional poll worker tools, including translated ballots and other election materials and extensive audio recordings in the Navajo language.⁸⁷ Along with translated words, the NNEA also implements the use of symbols and graphics for visual aid.⁸⁸ The NNEA conducts monthly meetings with Counties – including Apache, Navajo, and Coconino Counties – as a means of continuing engagement and collaboration.⁸⁹

More recently in *Navajo Nation Human Rights Commission v. San Juan County*, the District of Utah issued a decision where it discussed that a County has two major obligations when implementing the requirements of equal access to voting.⁹⁰ First, a county must provide material and assistance in a way designed to allow members of the language minority group to be effectively informed of and participate effectively in voting-connected activities.⁹¹ Second, an affected jurisdiction should take all reasonable steps to achieve that goal.⁹² Moreover, the Court said the Attorney General's determination of when a jurisdiction falls below the effectiveness standard is instructive.⁹³ The reasonable effectiveness standard under Section 203 is not one of perfection, rather it is something akin to substantial compliance.⁹⁴

Pursuant to Section 203, language assistance provided to historically unwritten language groups require “oral instructions, assistance, or other information relating to registration and voting.”⁹⁵ Both Section 203 and its accompanying regulations limit a jurisdiction's obligation for “historically unwritten” languages to oral language assistance.⁹⁶ However, in *Nick et. al. v. Bethel et. al.*, the court recognized that effective assistance could include a written sample ballot.⁹⁷ Furthermore, counties must create and implement systems designed to deliver “substantially equivalent information regarding voter registration and election.”⁹⁸ In Alaska, the court required certain written materials, suggesting that a county's decision to classify a language as unwritten is not the end of the analysis on provision of written translations.⁹⁹

⁸⁴ *Id.*

⁸⁵ Telephone Interview with Kimmeth Yazzie, Program and Project Specialist, Navajo Nation Election Admin. (Sept. 23, 2016) [hereinafter Telephone Interview with Kimmeth Yazzie].

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ 215 F.Supp.3d 1201, 1221 (D. Ct. Utah 2016).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 52 U.S.C. § 10503(c) (Westlaw through Pub. L. No. 115-90).

⁹⁶ 52 U.S.C. § 10503(c); *see also* 28 C.F.R. 55.12(c) (2018).

⁹⁷ *See* Court Order at 4-5, *Nick et. al. v. Bethel et. al.*, (Case No. 3:07-cv-0098) TMB (D. Alaska 2008).

⁹⁸ Transcript of Status Conference at 6, *Toyukak v. Treadwell*, No. 3:13-cv-137-SLG (D. Alaska Sept. 3, 2014) (on file with author).

⁹⁹ *See* Court Order, *Nick, et al.*, No. 3:07-cv-0098-TMB, at 4-5, 10 (D. Alaska July 30, 2008) (requiring county to provide a sample written ballot and a glossary in the Yup'ik language).

After a jurisdiction is determined to be governed by Section 203, that jurisdiction is required to take all reasonable steps to ensure that all voting materials is designed to effectively inform the language minority group of every aspect of the voting process.¹⁰⁰ In assessing compliance, the federal regulations denote that compliance “is best measured by results.”¹⁰¹ Collaboration between Counties and Tribes constitutes a factor weighing in favor of compliance.¹⁰²

Most Counties in Arizona provided varying forms of language assistance including Native American poll workers, poll worker training, bilingual poll workers, employment of translators, language glossary development, collaboration with Tribes, language outreach workers, ballot preparation, audio recordings of translations, reservation radio announcements, and information drives on reservations.¹⁰³

Out of the nine (9) counties Section 203 covered in 2016, only Navajo County delivered translations of voter registration information and ballot process information.¹⁰⁴ Apache County,¹⁰⁵ Coconino County,¹⁰⁶ Maricopa County, Pima County, and Pinal County provided translations of information regarding aspects of the ballot process, largely in the form of the early voting ballot, General Election ballot, General Election information, and voter instructions.¹⁰⁷ Mohave County and Yavapai County provided no voter registration or ballot translations.¹⁰⁸ To the best of the Clinic’s knowledge, Yuma County did not provide any election translations.¹⁰⁹

Coconino County has part of the Havasupai, Hopi, Hualapai, and Navajo reservations within its boundary, and each reservation triggered Section 203 coverage. The County in some capacity worked with all Tribes except for the Hualapai Tribe because no one resides on the Coconino County part of the Hualapai Reservation.¹¹⁰ Maricopa County has the Tohono O’odham Nation Reservation within its exterior boundaries, which triggered Section 203 coverage.

Apache County

¹⁰⁰ Purpose; standards for measuring compliance, 28 C.F.R. §55.2(b)(1) (2018).

¹⁰¹ Standards and proof of compliance, 28 C.F.R. §55.16 (2018).

¹⁰² *Id.* (stating that “[a] jurisdiction is more likely to achieve compliance with these requirements if it has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group”).

¹⁰³ The data obtained only looked at what the county recorder or election offices do to comply with Section 203. Student researchers did not review data regarding voter registration materials at the Department of Motor Vehicles and public agencies under the Motor Voter Act.

¹⁰⁴ See Navajo Cty. Response to General Election Survey (2016); see generally Consent Decree, *U.S. v. Ariz.*, CIV 88-1989 PHX EHC (D. Ariz. 1989).

¹⁰⁵ See Apache Cty. Response to General Election Survey (2016).

¹⁰⁶ See Coconino Cty. Response to General Election Survey (2016).

¹⁰⁷ See Maricopa Cty. Response to General Election Survey (2016); Pima Cty. Response to General Election Survey (2016); Pinal Cty. Response to General Election Survey (2016).

¹⁰⁸ See generally Mohave Cty. Response to General Election Survey (2016); Yavapai Cty. Response to General Election Survey (2016). Yuma County did not respond to General Election Survey *but see* Telephone Interview with Mary F. Martinez (the County Election Assistant said neither Cocopah nor Quechan receive any language assistance).

¹⁰⁹ *Id.*

¹¹⁰ See Coconino Cty. Survey Response.

Three tribes are located within Apache County – Navajo, White Mountain Apache and Zuni. The Navajo and Zuni Reservations triggered Section 203 coverage. Apache County worked with the Navajo Nation but had no obligation to provide assistance to the Zuni Tribe, because no Zuni Tribal members reside on the ceremonial lands that triggered Section 203.¹¹¹ The Navajo Nation Reservation and Off-Reservation Trust Land and the Zuni Reservation and Off-Reservation Trust Land triggered Section 203 coverage.

Navajo Nation Language Assistance

Apache County provided language assistance in Navajo through outreach workers, poll worker training, translation services, and collaboration with the Navajo Nation Elections Administration (“NNEA”).¹¹² They also collaborated to provide Navajo language options on ADA compliant touch screens.¹¹³

The County provided translations of the voting instructions and the general election ballot.¹¹⁴ The County implemented both written translations and audio translations but did not specify what material is provided in written form or as recorded oral translations.¹¹⁵ Audio translations are distributed to all polling locations on a CD-ROMs.¹¹⁶ The County assigned translators to all polling locations.¹¹⁷ The County also prepared and translated ballots prior to October 12, 2016 for early voting in the general election.¹¹⁸ Translators are selected “[t]hrough the poll workers elections process.”¹¹⁹ In addition to translators, the County provided “ADA compliant Touch Screen[s]” but it is not clear whether the technology conveyed written or oral translations.¹²⁰

Apache County employed two outreach workers in the County Elections Department.¹²¹ Apache County reported that it trained its poll workers to be aware of Native American languages that are subject to the translation requirements.¹²² The County reported that it reached out to Tribes in the County regarding language services and that the Navajo language was the only requested response.¹²³ The County also reported that the Navajo Nation contacted the County to request language services.¹²⁴

Coconino County

¹¹¹ See Daniel McCool & James Thomas Tucker, *The Most Fundamental Right Contrasting Perspectives on the Voting Rights Act 287* (2012).

¹¹² See Apache Cty. Survey Response.

¹¹³ *Id.*; Telephone Interview with Angela Romero, Elections Director, Apache Cty. (Sept. 26, 2016).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

Coconino County has five (5) federally recognized Indian tribes within its borders: the Havasupai Tribe, the Hualapai Tribe, the Hopi Tribe, the Kaibab Band of Paiute Indians, and the Navajo Nation. The Havasupai Reservation, the Hualapai Indian Reservation, the Hopi Reservation, and the Navajo Nation Reservation triggered Section 203 coverage. Therefore, Coconino County must provide language assistance in Navajo, Hopi, and the Yuma language group.

General Language Assistance

Coconino County reported that it provided language assistance in all three covered languages.¹²⁵ The County employs bilingual poll workers, translators, and recorded oral translations to provide language assistance at polling locations on the Navajo, Hopi and Havasupai Reservations.¹²⁶ The County reported that “the voters that need the language assistance do not read these languages” ... and that “[t]he only people that read and write the three languages are people that are bilingual.”¹²⁷ The County finds that the radio, and Chapter and Tribal meetings are the County’s preferred methods of outreach.¹²⁸

The County employs two Navajo speaking Native American Outreach employees.¹²⁹ The Havasupai Tribe assists the County to “find poll workers that live in Supai Village that can assist the elderly voters.”¹³⁰ The County outreach workers coordinate with tribes to find translators for Havasupai, Hopi, and the Navajo Nation.¹³¹ The County trains all poll workers to be aware of Native American languages that are subject to translation requirements within the County.¹³² The County translates general election information, voting instructions, and the general election ballot.¹³³ These translations are provided through bilingual poll workers, translators at polling locations, and as oral audio recordings.¹³⁴ Ballots were prepared and translated prior to October 12, 2016 for early voting in the general election.¹³⁵

Hopi Language Assistance

County outreach workers met on a regular basis with the Hopi Election Commission and with Karen Shupla, the Hopi Elections Office’s Tribal Registrar.¹³⁶ Ms. Shupla attends the County poll worker training sessions.¹³⁷ The County utilized radio broadcasts as one strategy to disseminate information to voters, although the broadcast signal does not reach all parts of the Hopi Reservation.¹³⁸ Coconino County workers also attended tribal meetings and conducted voter

¹²⁵ Coconino Cty. Survey Response.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Telephone Interview with Karen Shupla, Tribal Registrar, Elections Off., Hopi Tribe (Oct. 17, 2016).

¹³⁷ *Id.*

¹³⁸ *Id.*

registration drives.¹³⁹ During registration drives, the County distributed translated material such as ballot information, various voting dates and deadlines, and other informational materials.¹⁴⁰

The County provided translators at its polling place(s) on the Hopi Reservation.¹⁴¹ It also gave CD-ROMs containing the ballot translation in the Hopi language to the Moenkopi polling location and Tribal Offices.¹⁴² Finally, the Native American outreach employees worked with the Tribe to identify bilingual poll workers.¹⁴³

The geographical locations and separated villages presented a challenge, as they required translations distinct to each village's dialect.¹⁴⁴ Some Hopi villages refuse to vote in tribal and non-tribal elections because they choose not to recognize a Western-style democracy.¹⁴⁵

Navajo Language Assistance

The NNEA has established a productive partnership with Coconino County and met monthly prior to the 2016 election cycle to discuss election issues.¹⁴⁶ Coconino County provided a satellite office in Tuba City to assist voter access to elections during election season.¹⁴⁷ The County also attends tribal chapter meetings, flea markets, other events, and also provides voting information on local tribal radio stations.¹⁴⁸

The County said it ensured that Native American Outreach employees vetted translators before assigning them to polling places on the Navajo Reservation.¹⁴⁹ It also gave the Chapter Houses and Tribal Offices CD-ROMs with Navajo ballot translations.¹⁵⁰

Coconino County's Native American Outreach employees are bilingual English-Navajo speakers.¹⁵¹ Coconino County employees conduct outreach and community education.¹⁵²

Yuma Language Assistance

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* (It is not clear whether the entire Village or individuals from a Hopi Village abstain from voting).

¹⁴⁶ Telephone Interview with Kimmeth Yazzie.

¹⁴⁷ Telephone Interview with Donna Casner, Chief Deputy Recorder, Coconino Cty. Elections (Jan. 20, 2017) [hereinafter Telephone Interview with Donna Casner].

¹⁴⁸ *Id.*

¹⁴⁹ Coconino Cty. Response.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Telephone Interview with Kimmeth Yazzie.

Coconino County does not provide any written translations in Yuma.¹⁵³ Yuma is a language group that includes Pai languages such as Hualapai and Havasupai.¹⁵⁴ The County reported difficulty locating an appropriate individual or entity to work with for Yuma language translation.¹⁵⁵

The County did not report any language assistance for the Hualapai Reservation, but it is not required to provide language assistance because there are no residents on the Hualapai portion of the Reservation in Coconino County.¹⁵⁶

The language services Coconino County provided to the Havasupai Reservation is complex. The County outreach included posting election information on posters at Navajo Chapter Houses, Tribal offices, and around the Havasupai Village.¹⁵⁷ The County reported that the Havasupai Tribe declined language assistance but agreed to help the County to recruit residents of Havasupai Village as poll workers who could “assist the elderly voters.”¹⁵⁸ The two County outreach workers and the Havasupai Tribe worked together to find bilingual poll workers.¹⁵⁹ It is unclear if the bilingual poll workers created a translation of the ballot or election material prior to the election.

Coconino County provided significant language assistance for voters on the Hopi and Navajo Reservations. The evidence suggests that the County provides substantive language assistance to voters on both the Navajo and Hopi Reservations, and provides limited assistance to voters on the Havasupai Reservation based on the input from the Tribe.

Gila County

Gila County has three (3) federally recognized Indian tribes within its borders: the White Mountain Apache Tribe, the Tonto Apache Tribe, and the San Carlos Apache Tribe. In the 2016 election cycle, Section 203 did not require Gila County to provide any tribes within the County.

Prior to 2011, however, Section 203 determinations required Gila County to provide language assistance to Apache speakers on the San Carlos Apache Reservation. In 2011, San Carlos Apache lost coverage under Section 203. Despite the lack of required language coverage, the County has continued to employ an outreach worker and provide some language assistance in the Apache language.

Apache Language Assistance

The County provides verbal language assistance and some translated signage.¹⁶⁰ The County employs an outreach worker that closely aided both the White Mountain Apache and San Carlos Apache Reservations.¹⁶¹ The current outreach worker is a member of the San Carlos Apache

¹⁵³ Coconino Cty. Survey Response.

¹⁵⁴ LYLE CAMPBELL, AMERICAN INDIAN LANGUAGES: THE HISTORICAL LINGUISTICS OF NATIVE AMERICA 127 (2000 copy. 1997).

¹⁵⁵ Telephone Interview with Donna Casner.

¹⁵⁶ Coconino Cty. Survey Response.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Gila Cty. Response to General Election Survey (2016).

¹⁶¹ Telephone Interview with Marlo Cassador, Elections Dep’t, Gila Cty. (Oct. 3, 2016).

Tribe.¹⁶² The outreach worker posts voting information within Apache communities in Gila County, conducts events to reach young voters, and attends elder luncheons and candidate rallies.¹⁶³ The outreach worker also assisted the County in preparing an Apache glossary for translators.¹⁶⁴ Finally, the outreach worker informed Apache speakers of the election and voting process in the Apache language in hopes of recruiting Apache speakers as poll workers for Election Day.¹⁶⁵

Gila County assigned translators approved by the Voter Outreach Coordinator and bilingual poll workers at the polling places in Carrizo, Canyon Day, and San Carlos.¹⁶⁶ They are able to translate the voter registration information, voter identification information, general election information, early voting information, voting instructions, and the general election ballot.¹⁶⁷ The County translated the ballots prior to October 12, 2016 for early voting in the general election.¹⁶⁸ The County reported that it did not contact Tribes regarding language assistance, nor was it contacted by any Tribes in the County regarding language assistance.¹⁶⁹

Graham County

Graham County has two (2) federally recognized Indian tribes within its borders: the San Carlos Apache Tribe and the White Mountain Apache Tribe. Graham County is not subject to Section 203 for any Native American language.

Prior to 2011, the Director of the Census determined that Section 203 required Graham County to provide language assistance to Apache speakers. However, San Carlos Apache lost coverage after 2011. Despite this change, the County has continued to provide some language assistance in the Apache language.

Apache Language Assistance

The County conducted outreach to the San Carlos Apache Tribe and coordinated events with the Tribe to recruit translators for Election Day.¹⁷⁰ While the County has no special protocol for providing translators, outreach and community participation ensures poll workers on the San Carlos Apache Reservation are Apache speakers. The County stated that because the Apache language is an oral language, there was no need for written translations.¹⁷¹ The County did not prepare nor translate any ballots for early voting in the general elections because Section 203 did not apply.¹⁷² The County did not reach out to Tribes to offer language assistance, nor did it receive

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Gila Cty. Survey Response.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Telephone Interview with Graham Cty. Elections (Oct. 2, 2016).

¹⁷¹ *Id.*

¹⁷² Graham Cty. Response to General Election Survey (2016).

any requests from Tribes regarding language assistance.¹⁷³ The County has only implemented informal strategies, but does not provide formal translators.¹⁷⁴ However, the County reported that poll workers are bilingual and able to assist with translations when needed.¹⁷⁵

Greenlee County

Greenlee County has no federally recognized Indian tribe within its borders. In Greenlee County, Section 203 language assistance does not cover any indigenous languages. Therefore, the County does not provide language assistance in any Native American languages.¹⁷⁶

La Paz County

La Paz County has one federally recognized Indian tribe within its borders: the Colorado River Indian Tribe. In La Paz County, the Section 203 language assistance requirement does not cover the Colorado River Indian Tribe. La Paz County did not respond to the General Election Survey, and to the Clinic's knowledge, the County does not translate or provide any assistance in any Native American language.

Maricopa County

Maricopa County has four (4) federally recognized Indian tribes within its borders: the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Tohono O'odham Nation. The Tohono O'odham Reservation triggered Section 203 coverage, although there are three (3) O'odham Tribes in Maricopa County.

Tohono O'Odham Language Assistance

Maricopa County only provided oral translations of the voting instructions and the ballot in the O'odham language, the Kaka Village Community Center in the Hickiwan precinct was the only location that received the material.¹⁷⁷ The Tohono O'odham Nation is the only tribe that the County proactively assisted per the Nation's request.¹⁷⁸ The County noted the translation process required an elaborate and informational restructuring of the English version due to the cultural and linguistic differences.¹⁷⁹ Thus, the translation process is necessarily complex to ensure the Tohono O'odham voters have all voting information and receive adequate information.¹⁸⁰

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Greenlee Cty. Response to General Election Survey (2016).

¹⁷⁷ Maricopa Cty. Survey Response.

¹⁷⁸ *Id.*, question 11 at 2.

¹⁷⁹ Telephone Interview with Karen Osborne, Dir. of Elections, Maricopa Cty. (Sept. 23, 2016) [hereinafter Telephone Interview with Karen Osborne].

¹⁸⁰ *Id.*

The Maricopa County recorder's website provides a glossary of voting terms in the O'odham language.¹⁸¹ According to the Maricopa County Department of Elections, it only translated the ballot and voting instructions in oral form because the O'odham language is traditionally an oral language, and it was not feasible to translate all of the election information that Section 203 mandates.¹⁸² The County did prepare and translate ballots prior to October 12, 2016, for early voting in the general election.¹⁸³

Mary Fontes, Federal Compliance Officer for Maricopa County, provided information regarding the extent to which Maricopa complies with Section 203 for Native American languages.¹⁸⁴ Maricopa County provided on-site translators at the Gila Bend polling site just north of the Tohono O'odham Reservation in an effort to better provide assistance to Tohono O'odham speakers on Election Day.¹⁸⁵ The County also provided translators at the Kaka Village Community Center in the Hickiwan precinct.¹⁸⁶ In the past, the O'odham translators were provided at Ft. McDowell Yavapai Nation, Gila River Indian Community, and Salt River Pima-Maricopa Indian Community.¹⁸⁷ The County also provided the option to call a translator, employed bilingual board workers, and utilized O'odham language "trouble shooters."¹⁸⁸ Ms. Fontes also said Linda Weeden, Deputy Elections Director of Maricopa County, reached out to areas known to request language assistance.¹⁸⁹ The County indicated that only the Tohono O'odham Nation responded.¹⁹⁰ The County have discontinued its efforts to identify locations on other reservations that previously expressed a need for bilingual translators.¹⁹¹ The Recorder's Office selects translators based on their proficiency, and often Tribal Government officials make recommendations.¹⁹² The County also recruits individuals who participate in the Tohono O'odham Studies Program at the Tohono O'odham Community College.¹⁹³

Maricopa County actively attempts to comply with the requirements of Section 203, because the County provided language assistance in the O'odham language for the reservation that triggered coverage. The County determined the O'odham language to be a traditionally unwritten language, so it provided primarily oral assistance via a translation of the ballot via CD-ROMs., a compilation of publically available glossary of terms, as well as hiring translators and other staff who could provide personalized assistance to voters on Election Day. The County did not provide a written translation of the following; registration information, voter ID information, early voter

¹⁸¹ *Maricopa County Elections Department Tohono O'Odham Election Terminology Glossary*, MARICOPA CTY. RECORDER'S OFF., <https://recorder.maricopa.gov/pdf/TohonoGlossary2010.pdf> (last visited Feb. 19, 2018) (created in collaboration between Maricopa County and the Tohono O'Odham Nation).

¹⁸² Telephone Interview with Karen Osborne.

¹⁸³ Maricopa Cty. Survey Response; *see also* Telephone Interview with Karen Osborne (stating she believed that the CD of the ballot translation was available for early voting).

¹⁸⁴ Telephone Interview with Mary Fontes, Fed. Compliance Officer (Sept. 26, 2016) [hereinafter Telephone Interview with Mary Fontes].

¹⁸⁵ *Id.*

¹⁸⁶ Maricopa Cty. Survey Response.

¹⁸⁷ Telephone with Mary Fontes.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Telephone Interview with Mary Fontes, *supra* note 212.

¹⁹² *Id.*

¹⁹³ *Id.*

information, general election information, voting instructions, the early vote ballot, the general election ballot, nor the election department website.

Mohave County

Mohave County has three (3) federally recognized Indian tribes located within its borders: the Fort Mojave Indian Tribe, the Hualapai Tribe, and the Kaibab Band of Paiute Indians. The Hualapai Reservation triggered Section 203 coverage for the Yuma language. Mohave County did not provide language assistance during the 2016 Election.

Yuma Language Assistance

Mohave County received a letter from the United States Department of Justice notifying the County of its legal obligations under Section 203. The County reached out to all three (3) tribes within its jurisdiction between 2012 and 2014.¹⁹⁴ The County reported that no tribes received assistance, as too few speakers of the language remained to begin the translation process.¹⁹⁵ Allen Tempert, Elections Director said that Yuma was a “dying language.”¹⁹⁶ The County also stated that the Census determination of covered languages is too vague in describing which language group actually requires assistance.¹⁹⁷ Thus, the County concluded that language assistance was unnecessary.¹⁹⁸

Mohave County failed to provide any language assistance in the Yuma language for the Hualapai Reservation, which triggered Section 203 coverage.

Navajo County

Navajo County has three (3) federally recognized Indian tribes within its borders: the Hopi Tribe, the Navajo Nation, and the White Mountain Apache Tribe. In Navajo County, Section 203 language assistance covers the Hopi and Navajo languages. The Hopi Reservation and the Navajo Reservation triggered Section 203 coverage.

Hopi Language Assistance

¹⁹⁴ Mohave Cty. Response, *supra* note 105; Telephone Interview with Allen Tempert (reporting that the County sent a letter to the Hualapai Tribe and did not receive a response).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Mohave Cty. Survey Response; *see also* Telephone Interview with Allen Tempert (Mohave County noted that the Hualapai, Kaibab Paiute, and Fort Mohave Indians answered similarly in that it was not necessary to provide language assistance translators at the polling locations, and the County felt confident the Tribal members are fluent in English).

Initially, an official from the Navajo County Elections Department refused to answer questions regarding language assistance and Section 203 compliance.¹⁹⁹ Subsequently, the County confirmed that it provides language assistance to Hopi language speakers.²⁰⁰ Navajo County reported that it provides written translations, bilingual poll workers, recorded oral translations and translators at polling locations.²⁰¹ It also provides translations for voter registration information, voter ID information, general election information, information on early voting, voting instructions, the early voting ballot, and the general election ballot.²⁰² The County prepared and translated ballots prior to October 12, 2016 for early voting in the general election.²⁰³

Navajo Language Assistance

Navajo County provides language assistance to Navajo language speakers.²⁰⁴ Navajo County reported that it provides written translations, bilingual poll workers, recorded oral translations and translators at polling locations.²⁰⁵ As noted earlier, NNEA collaborates with counties to develop a variety of tools for poll workers to assist Navajo speaking voters.²⁰⁶ The County provides translations for voter registration information, voter registration information, voter ID information, general election information, information on early voting, voting information, voting instructions, the early voting ballot, and the general election ballot.²⁰⁷ The County also reported that it has “Express Vote Machines” with English, Spanish, and Navajo language options.²⁰⁸

Pima County

Pima County has two (2) federally recognized Indian tribes within its borders: the Pascua Yaqui Tribe and the Tohono O’odham Nation. In Pima County, Section 203 language assistance covers the Tohono O’odham and Yaqui languages. The Tohono O’odham Reservation and Pascua Yaqui Reservation triggered Section 203 coverage. While Pima County provided language assistance to the Tohono O’odham, it determined that Pascua Yaqui did not require language assistance under Section 203.

Tohono O’odham Language Assistance

Pima County maintains a longtime relationship with a Tohono O’odham translator to record oral translations of the ballot onto CD-ROMs.²⁰⁹ The Tohono O’odham Nation approved pre-election recordings produced by the County, and the County asked for the Nation’s recommendations for

¹⁹⁹ Telephone Interview with Blain, Election Dep’t, Navajo Cty. (Sept. 16, 2016).

²⁰⁰ Navajo Cty. Survey Response.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See generally Telephone Interview with Kimmeth Yazzie; Navajo Cty. Survey Response.

²⁰⁷ Navajo Cty. Survey Response.

²⁰⁸ *Id.*

²⁰⁹ Pima Cty. Response, *supra* note 104; Telephone Interview with Sarah, Permanent Staff Member, Pima Cty. Elections Dep’t (Sept. 19, 2016).

other translators.²¹⁰ The County provided copies to all polling locations on the Tohono O'odham Reservation.²¹¹ Pima County also sought bilingual poll workers from the Tohono O'odham community, but it does not translate the O'odham language into written form.²¹² The County translates voter identification information, general election information, voting instructions, and the general election ballot.²¹³ The ballot is only available via a recorded oral translation but was not prepared and translated prior to October 12, 2016 for early voting in the general election.²¹⁴ Pima County posts Tohono O'odham tribal members at polling sites on the Tohono O'odham Reservation.²¹⁵ If the poll worker cannot adequately assist with a voter's translation needs, the poll worker is instructed to call the Elections Office and personnel attempt to link the call with a person that can assist.²¹⁶

Yaqui Language Assistance

The County reported that it only provided translations in the O'odham language.²¹⁷ The election department said the County reached out to the Yaqui speaking community and determined that a substantial portion of the Pascua Yaqui Tribe speak Spanish or English.²¹⁸ The County did not specify with whom they spoke or how they determined what language Pascua Yaqui tribal members speak.²¹⁹

Pima County's position that the Pasqua Yaqui Reservation does not require language assistance is likely insufficient, because according to census determinations there are enough Yaqui speakers to warrant language assistance.

Pinal County

Pinal County has four (4) federally recognized Indian tribes within its borders: the Ak-Chin Indian Community, the Gila River Indian Community, the San Carlos Apache Tribe, and the Tohono O'odham Nation. In Pinal County, Section 203 language assistance covers the Tohono O'odham language. The Tohono O'odham Reservation triggered Section 203 coverage.

Tohono O'odham Language Assistance

There is only one precinct located on the Tohono O'odham Reservation in Pinal County. During the 2016 election cycle, the Chuichu polling site, located on the northern part of the Tohono O'odham Reservation, had bilingual poll workers assisting voters on Election Day.²²⁰ Pinal

²¹⁰ See Pima Cty. Survey Response.

²¹¹ Telephone Interview with Sarah.

²¹² Pima Cty. Survey Response.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Telephone Interview with Sarah.

²¹⁶ See Pima Cty. Survey Response.

²¹⁷ *Id.*

²¹⁸ *Id.*; Telephone Interview with Sarah.

²¹⁹ *Id.*

²²⁰ Telephone Interview with Michelle Forney, Elections Director, Pinal County (Sept. 26, 2016).

County hired individuals from the Gila River Indian Community and Tohono O'odham community to work as bilingual poll workers at five additional locations.²²¹ Bilingual poll workers translate General Election Information and the General Election Ballot.²²² The County hired bilingual translators prior to October 12, 2016 for early voting in the general election.²²³ The County Elections Director said the United States Department of Justice has not issued notices of noncompliance in recent years and the Elections Department keeps an open door policy allowing the Tohono O'odham Nation to bring forward any concerns.²²⁴

According to the County, the Nation did not request any language assistance from the County.²²⁵ The Pinal County Elections Director said the department is open to listening to tribes on any voting issues.²²⁶ However, the County also reported that they did not reach out to Tribes to see whether they required assistance.²²⁷

Pinal County provided some language assistance on the reservation that triggered coverage. The County staffed the six polling locations on both the Tohono O'odham Reservation and Gila River Indian Community Reservation with bilingual poll workers who were available to translate ballots. However, the County did not provide a standardized translation of the ballot in either oral or written form. They also did not offer language assistance for early voting. Thus, the County took some steps to address the language needs of voters on the triggering reservation, Tohono O'odham, and provided additional assistance on the Gila River Indian Reservation, but not all election information was translated into the O'odham language.

Santa Cruz County

In Santa Cruz County, Section 203 language assistance does not cover any indigenous languages. There are no federally recognized tribes within the boundaries of Santa Cruz County.

Yavapai County

In Yavapai County, Section 203 language assistance covers the Yuma language. Yavapai County has three (3) federally recognized Indian tribes within its borders: the Hualapai Tribe, the Yavapai-Apache Nation, and the Yavapai-PreScott Indian Tribe. The Hualapai Reservation triggered Section 203 coverage simply because a portion of the reservation is within Yavapai County. It is unclear whether any Hualapai voters live on the portion of the reservation that is within the County. According to the US Census, most of the 1,353 tribal members residing on the reservation are concentrated in Peach Springs Arizona.²²⁸ The other large portion of tribal members live off the reservation.²²⁹ Yavapai County made no effort to comply with the requirements of Section 203

²²¹ Pinal Cty. Survey Response.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*; Telephone Interview with Michelle Forney.

²²⁷ Pinal Cty. Survey Response.

²²⁸ HUALAPAI TRIBE, <http://hualapai-nsn.gov/about-2/> (last visited April 08, 2018).

²²⁹ *Id.*

during the 2016 Election; however, there is strong likelihood that it had not duty to comply if there were no Hualapai language speakers living on the Reservation.²³⁰

²³⁰ See generally Yavapai Cty. Response, *supra* note 105.

Yuma Language Assistance

The County did not provide assistance in any form in the Yuma language.²³¹ The Hualapai reservation triggered Section 203 coverage, but the County explained that all non-English speaking groups have integrated.²³² Yavapai County made no effort to comply with Section 203.

Yuma County

Yuma County has two (2) federally recognized Indian tribes within its borders: the Quechan Indian Tribe and the Cocopah Indian Tribe. In Yuma County, Section 203 language assistance covers the Yuma language. The Cocopah Reservation triggered Section 203 coverage.

Yuma Language Assistance

Yuma County did not provide any language assistance under Section 203. Yuma County Recorder's Office said only English and Spanish are available over the phone to any voter that calls for assistance.²³³ Yuma County said it has had difficulty complying with Section 203 due to the current state of the Tribe's language.²³⁴ County Elections Service officials stated the Cocopah language is traditionally an oral language so audio recordings provide the most efficient way to implement Cocopah language assistance.²³⁵ The Elections Services Office, the County's elections department, reached out to the Cocopah Tribe, prior to the 2016 Election in an effort to record oral translations of the ballot.²³⁶ According to the County, Cocopah tribal members responded by saying that the language is a dying language.²³⁷ As a result, calls received by the County's election office requesting translations are referred to the Cocopah Tribe.²³⁸ Elections Services did not specify who at the Tribe told the County that Cocopah is a dying language, nor did the County identify which department it contacted.²³⁹

The Cocopah Elections Committee confirmed that many tribal members do not speak the Cocopah language, but that the Tribe still provides translators at tribal elections.²⁴⁰ The Elections Committee does not believe there is a demand for county-wide translations or that it was necessary to post Cocopah translators county-wide.²⁴¹ The Cocopah Reservation triggered Section 203, but the uncertainty regarding which individuals need translations have created an obstacle for Yuma County.

²³¹ *Id.*

²³² Telephone Interview with Les Bowen, Elections Office Technician, Yavapai County (Fall 2016, *Confirmed and Re-interviewed* April 17, 2018).

²³³ Telephone Interview with Ashley, Off. Assistant, Yuma Cty. Recorder's Off. (Sept. 16, 2016).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Telephone Interview with Mary F. Martinez, Election Assistant, Yuma Cty. Elections Serv. (Sept. 16, 2016).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Telephone Interview with June Stillings, Chairwoman, Elections Committee, Cocopah Indian Tribe (Nov. 4, 2016).

²⁴¹ *Id.*

Yuma County did provide any language assistance to the Cocopah Tribe in 2016. However, the County did attempt translation efforts with the Tribe but discontinued because the County believed the language was either a dying language or because the County said undisclosed individuals alleged that the Tribe does not need language assistance. On the other hand, the Cocopah Indian Tribe utilizes its own translators at Tribal elections.

Summary of 203 language assistance

In summary, some counties provided two or more language assistance interventions for Native American voters. These resources or tools were mainly at the disposal of the poll worker, and made available so language assistance may be provided to the voter. Other counties only provided one resource or at the bare minimum, the County ensured an untrained bilingual poll worker was at polling locations on reservation. Moreover, some Counties failed to provide translations in all languages covered by Section 203. Three counties failed to comply with Section 203 requirements at all, giving two reasons why no language assistance was provided. Those reasons include: 1) the Tribe has integrated/assimilated into the surrounding English-speaking community, and 2) the Tribe's language is a dying language. Thus, the three Counties determined that the Tribes no longer required language assistance despite the federal requirement.

The law only requires historically unwritten languages receive oral assistance or material. The United States Department of Justice's enforcement standards require historically unwritten language assistance and material "be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities).²⁴² The Alaska District Court reasoned that assisting speakers of historically unwritten languages may nonetheless require print translations, including "some election-related materials . . . such as sample ballots, to provide 'effective' language assistance, as required by federal regulations implementing VRA."²⁴³ This case suggests that the efficacy of language assistance for voters may override the exception for historically unwritten languages.

Some Arizona Counties attempted to provide effective language assistance under Section 203. However, many Counties made minimal efforts to contact Tribes and did not attempt to comply with federal law. Arizona Tribes should review the language assistance provided to its voters to determine if effective assistance is provided to Native American language speakers in their communities.

On November 22, 2016, the Census Bureau updated the Federal Register with new Section 203 coverage determinations.²⁴⁴ Under the new Section 203 language determinations, only two Native American languages must be translated: Apache and Navajo.²⁴⁵ The table below provides the updated 2016 Section 203 covered languages and the reservations that triggered Section 203.

²⁴² 28 C.F.R. § 55.2(b)(1) (2018).

²⁴³ Court Order, Nick, et al. v. Bethel, et al., (Case No. 3:07-cv-0098) TMB at 4-5 (D. Alaska 2008)

December 5, 2016 Section 203 Determinations		
County	Language	Reservation Trigger
Apache	Navajo	Navajo Nation
Coconino	Navajo	Navajo Nation
Gila	Apache	San Carlos Reservation
Graham	Apache	San Carlos Reservation
Navajo	Navajo	Navajo Nation
Pinal	Apache	San Carlos Reservation

CONCLUSIONS AND RECOMMENDATIONS

- Tribes who lost Section 203 coverage should work directly with their Counties to address any language translation issues or requests.
- Tribes should request language assistance if it is needed even if Section 203 of the Voting Rights Act does not require language assistance.
- Tribes should assess whether language assistance provided by the Counties is effective.
- Tribes should recommend early voting locations to Counties instead of relying on the County to decide the locations.
- Tribes should consider providing transportation to the polls on Election Day, in order to address the difficulties voters face in traveling to voting locations.
- Tribes should encourage Tribal members to serve as poll workers at polling locations on the reservation during the election. Tribal members working at the polls with proper poll worker education will be beneficial to the Tribe.
- Each Tribe should appoint at least one attorney from its legal department for the Arizona Native Vote – Election Protection Project .
- Tribes may wish to consider conducting Tribal elections the same day as state and federal elections to improve voter turnout.
- Counties should institute super precincts on all on-reservation polling sites in order to address the issue of voters travelling to incorrect polling locations and to eliminate the rejection of out-of-precinct ballots.
- Tribes should work with the County to gather precinct data and locations so adequate notice is provided to Tribal members about their voting day locations.
- Arizona should allow same-day registration to alleviate rejection of provisional ballots filed by unregistered voters.
- Arizona should allow non-partisan observers in the polls.
- Tribes should work with counties to ensure that Counties are training poll workers on nontraditional addresses and acceptable Tribal IDs.
- Counties and advocacy groups should provide education on registering for the Presidential Preference Election to Native American voters.
- Tribes should pay attention to new laws which impact voting at the polls or closing polling locations.
- Tribes should educate lawmakers on the hurdles to voting by mail.

APPENDIX I
INCIDENT REPORTS

April 9, 2018

County	Presidential Preference Election Day Incident Reports
Maricopa County	Voter called because she did not receive her early ballot in the mail and she despite being on the permanent early voter list. She went to the recorder's office and was told that she was not eligible to receive a ballot.
Maricopa County	Voter wanted to know if voting by early ballot if she had to wait in line.
Maricopa County	Caller from Maricopa County has voter card reading "party not designated." The hotline volunteer informed the caller that you have to have a party designation in order to participate in the Presidential Preference.
Maricopa County	Voter said she was turned away at the polling location because her voter registration stated "no party designation." Hotline volunteer informed caller that for the Presidential Preference she has to be a part of a party to participate.
Maricopa County	Voter called to verify whether her elderly parents are registered to vote and to confirm their assigned polling location. Parents are visiting in Phoenix, but reside in Navajo County.
Maricopa County	Voter called Native Vote Hotline to look up and see if he was registered.
Maricopa County	Caller wanted to know about the status of her registration and the closest polling location.
Maricopa County	Voter called to inquire about whether his registration was active.
Maricopa County	Voter called Native Vote hotline to look up and see if he was registered.
Maricopa County	Caller was seeking confirmation of whether they are registered to vote with a party.
Maricopa County	Voter called to check voter registration and polling location.
Maricopa County	Voter called in to determine if he was still registered to vote.
Maricopa County	Caller called to verify whether she was registered to vote and affiliated with a party.
Maricopa County	Caller called to confirm whether she was registered in AZ. She moved from NM last year and updated her driver's license this year.
Maricopa County	Voter was unsure where her voting location is. She said she usually receives information in the mail, and she didn't receive any information about polling locations this time.
Maricopa County / Navajo County	Caller said her parents were denied voting. They used their driver's licenses where address is on Navajo Reservation.
Navajo County / Apache County	Voter called stating he was denied voting today in Navajo County at the Kayenta Polling location.
Pima County	Caller called to check registration status in Pima County.
Pima County	Voter wanted to know where her polling location was.
Pima County	Voter wanted to know polling location for boyfriend.
Pima County	Early voter didn't use her ballot.
Pinal County	Voter called because he was not on voter rolls in D4 polling location on Gila River Indian Reservation in Pinal County so the poll workers offered him a provisional ballot. He was concerned that he was offered a provisional ballot instead of a regular ballot.

April 9, 2018

	Lady, who is unnamed, called and said that the poll worker was denying her a ballot. She stated that she knew she had an active registration because she looked up her information online the night before. She stated that she showed the poll worker her tribal ID and they denied her a ballot. The poll worker stated that she was not on the appropriate roster and that was the reason they denied her.
	Woman wanted to know the nearest polling location to her address at 6212 W. Joan of Arc, Phoenix, 85029.
	Voter wanted to know if because he was a Green Party member, if he could vote.
	Voter called and has a disability. He votes in Maricopa County, but the lines are long, and he cannot stand longer than 15 minutes.
	Ann Hendricks did not know where to go vote. She remembered registering in Ft. Apache sometime before, but moved to Phoenix and now lives in Tucson. She changed her driver's license in Maricopa County, in Phoenix, and thought she changed her voter's registration as well. However, she stated that she did not remember receiving confirmation that she changed her voter's registration and did not have a voter's registration card. She has her new driver's license.
	Voter called to make sure that only voters registered to a party could vote in the Presidential Preference.
	Voter wanted to verify that she was registered to vote in the election. She registered to vote when she obtained her identification card.
County	Primary Election Day Incident Reports
Apache	<p>Voter brought her elderly disabled parents to vote at Precinct # 74 (Steamboat Chapter House) but found there were no designated handicap parking spots and the condition of the parking lot made it difficult to get to the building to vote;</p> <p>The two disabled parents did not vote because they could not exit the vehicle and access the building safely.</p> <p>Voter also observed a van of elderly community members who tried to access the building but returned to their van without voting because of the difficulty of crossing the parking lot with canes and walkers.</p>
Apache	Voter inquired about transportation to polls. Apache County does provide transportation to polls and voter was given this information.
Apache	Voter arrived at the polling location at 6 A.M. and was unable to vote because of technical issues. Two other voters were present and left without voting. There were no paper ballots available. Voter was unable to return to the polls and ultimately did not cast a ballot.
Apache	Voter was incorrectly given a Republican ballot and when she asked the poll worker for a Democratic ballot she was denied one.

April 9, 2018

Apache	Voter said poll workers were not asking for any form of identification before issuing ballots.
Apache	Voter said an interpreter working the polls had difficulties using the polling tablets, which caused delays. Volunteers said the training they received the week prior was insufficient and attempted to figure out how to work the tablets. Voters were delayed while they waited for volunteers to fix tablet issues.
Apache	Voter arrived to the polls at 6 A.M. and found that no poll workers were available.
Maricopa	Voter inquired about her polling location. Unknown if location information was found for voter.
Mohave	Voter inquired about her polling location. Location was found via the Secretary of State's website.
Pinal	Voter inquired about transportation to polls.

County	Polling Location	General Election Day Incident Reports
Apache		
Apache	St. Michael's Chapter House	Hotline provided correct polling location for a voter.
Apache	Ganado	Voter cast an early ballot via mail and received mail on Friday stating there was a problem with her ballot. She thought it was saying that she did not vote for the ballot propositions. The SOS website identified that her ballot was returned to the county. Hotline volunteer told her that if she wanted to be sure, she could always vote a provisional ballot at her polling location.
Apache	Klagatoh	Machines malfunctioning. Poll workers tried calling Apache County and could not get in touch with anyone. Hotline called an on-call attorney to check on the situation.
Apache	Unknown	Voter asked a field volunteer on the Tohono O'odham Nation in Pima County to know if she could submit her early voting ballot in Pima County when she is registered in Apache County. The field volunteer called the hotline. A hotline volunteer informed the voter that her vote would only count if her early vote was dropped off in Apache County.
Coconino		

April 9, 2018

Coconino	Coalmine	Voter residing in Mesa, Arizona called to verify her registration. Hotline volunteer verified that she was registered at the Coalmine Precinct. Volunteer advised her that her only option to vote was to go to her registered precinct.
Coconino	Unknown	Voter called to ask whether she could vote in Phoenix, even though she was registered in Tuba City, Arizona. Hotline volunteer attempted to verify registration, but the voter declined to provide further information.
Gila		
Gila	San Carlos	A candidate had two minors handing out bottled water and flyers with the school board candidate's name on it. Volunteer reported the activity to a poll worker. Poll worker stopped the activity.
Gila	San Carlos	The polls closed three minutes early. It was reported that the polls opened three minutes early. Eight voters arrived at the same time the Marshall called the time. He cut them off in line saying that, according to his clock, they were late. The voters pulled out their cell phone showing a couple minutes left. All voters remained in line behind the Marshall anyway. The Marshall did end up allowing

April 9, 2018

		each voter a chance to vote. The polls closed at 6:57 P.M. and the last voter in line left the polling place at 8:03 P.M.
Gila	San Carlos	Voter left due to long lines. The line was at the 75-foot line.
Gila	San Carlos	Voter brought in his early ballot, but the ballot machine was not working. Voter stayed until the machine could be rebooted.
Gila	San Carlos	Voter complained that only last names of each candidate were on the ballot.
Gila	San Carlos	Voter tried to vote out of precinct at Peridot precinct in Graham County even though he knew his correct location, because he did not want to drive to his polling precinct.
Gila	San Carlos	Voter was denied a ballot. The voter had a registration confirmation number through servicearizona.com. A hotline volunteer could not find her in either the V.A.N. or the Secretary of State website. The volunteer advised she request a provisional ballot.
Gila	San Carlos	Voter in Peridot was told she was not registered and was not offered a provisional ballot. Hotline checked her registration and she was registered in San Carlos. The database showed that she had been dropped from the rolls. Voter had her tribal I.D. Volunteer told her to vote a provisional ballot in San Carlos. However, voter declined to do so because she did not have transportation.
Graham		
Graham	Bylas	Field volunteer reported that several voters were denied ballots for lack of I.D. Voters were told that they needed a voter registration card. The on-call attorney for the San Carlos Apache reservation was notified. He was asked to call the county elections office.
Graham	Bylas	Voter tried to vote but was told that she had already voted by early ballot. Voter said she never votes early. She said there is another person with her name who lives out of town and that maybe the county mixed them up. Volunteer told her she could go back to the polling place and request a provisional ballot.
Graham	Bylas	Voter went to wrong polling location. Volunteer assisted voter in identifying correct polling place.
Graham	Peridot	Voter tried to vote at a precinct located at San Carlos Housing Authority but was sent to Peridot. Peridot said she was not registered there either. The voter called hotline. The Arizona Secretary of State website showed her active at San Carlos. Volunteer told her to let precinct know she was registered at San

April 9, 2018

		Carlos and that if the precinct worker continued to deny her, to ask why and to ask for a provisional ballot.
Graham	Peridot	Voter went to San Carlos and was told he could not vote and was told to go to Peridot. Peridot also told him he was not registered there. He called the hotline. The Arizona Secretary of State did not show him as registered. The V.A.N. showed him as dropped. He was advised to ask the precinct to look on the inactive list. If he was not on the inactive list, he was told to ask for a provisional ballot. When he went back in, he was told he could not vote and the worker told him he could not get a provisional ballot. The volunteer offered to go in with him to get a provisional ballot, but the voter wanted to move on. He did not vote.
Graham	Peridot	Voter could not be found in the database. Volunteer advised him to vote a provisional ballot.
Graham	Peridot	There was no sign at the old Peridot precinct location directing voters to the new location in Peridot. Many voters complained of going to the wrong address.
Graham	Peridot	Voter faced problem with registration.
Graham	Peridot	Hotline volunteer confirmed a voter's registration.
Graham	Unknown	Voter needed to know their polling location. Volunteer successfully assisted.
Graham	Unknown	Voter located in Scottsdale was registered in Graham County and wanted to know if he could vote provisionally in Maricopa County.
Maricopa		
Maricopa	Echo	Voter called to check his registration and V.A.N. showed that he was "dropped" from the rolls. He was advised that he should vote a provisional ballot.
Maricopa	Guadalupe	Voter had moved and her address did not match her Tribal I.D. Poll worker was helpful and informed her about proper I.D.
Maricopa	Guadalupe	Polling Precinct signs were not visible from the street. Poll watcher moved signs near street at mid-morning.
Maricopa	Guadalupe	U.S. Border Patrol Vans were spotted in the parking lot. They stayed for approximately five (5) minutes.
Maricopa	Guadalupe	Two voters in need of assistance complained of another voter taking pictures of them. The voter taking pictures was removed from the premises.
Maricopa	Guadalupe	Field volunteers assisted six (6) voters with registration verification. Four (4) were not registered and two (2) were registered.
Maricopa	Guadalupe	Field volunteers assisted two (2) voters in verifying that the state received their ballot. Both were counted.

April 9, 2018

Maricopa	Guadalupe	Field volunteers assisted four (4) voters verify their precinct location. Three (3) voters were at their correct precinct, one (1) was not.
Maricopa	Guadalupe	Field volunteers assisted three (3) voters with inquiries about dropping off multiple ballots for family members.
Maricopa	Guadalupe	Field volunteers assisted five (5) voters with general ballot inquiries.
Maricopa	Guadalupe	Hotline volunteer looked up voter's name but could not find his full name. It appeared that he was not registered to vote.
Maricopa	Honda	Voter called to find out his polling place. Hotline volunteer verified where he was assigned and provided him with the precinct information.
Maricopa	Honda	Voter wanted to know if she was registered. V.A.N. indicated that she was on the inactive list. She had moved to a new address and her ID indicated her updated address. She was advised by hotline to go to the new polling location and vote a provisional ballot.
Maricopa	Honda	Voter had recently moved to the precinct. Voter was listed as dropped and was not listed at Honda. Volunteer advised voter to vote at old precinct and show tribal I.D.
Maricopa	Honda	Voter called the hotline to check if he was registered. Hotline volunteer confirmed his that he was on the inactive list. Volunteer advised him that voting would put him back on the active list and that he should be able to vote a regular ballot.
Maricopa	Honda	Voter tried to drop off his ballot but the poll worker would not allow him to put his ballot in the box. The Voter was registered in Navajo County (Whiteriver). He reported that the rude poll workers were "old white people who acted like they did not want to be there."
Maricopa	Honda	Voter was told that her address did not match and was given a regular provisional ballot, which she voted. Her I.D. had a P.O. Box and rolls had physical address. Rolls should have both P.O. and physical address. We confirmed that her voter record address did match her I.D. and told her that she should go back inside and ask them to disregard the provisional ballot and give her a regular one.
Maricopa	Honda	Voter wanted to know his registration status and his voting location. The V.A.N. indicated that he was "unregistered". On the Secretary of State's website, he is listed as a mismatch. The hotline volunteer gave the voter the Secretary of State's phone number.
Maricopa	Honda	Voter called the hotline to confirm whether he could early vote and whether Salt River had an early voting location. Hotline volunteer successfully assisted him.
Maricopa	Honda	Field volunteer called the hotline to verify voter's precinct location. The voter was told that Honda was the incorrect polling location and gave her an address near Paiute Park. The Hotline located her polling location per her I.D. address, which was at Tonalea School.

April 9, 2018

Maricopa	Honda	Field volunteer called the hotline to inquire about campaigning sign rules. Hotline volunteer told him that electioneering signs are not allowed within the 75-foot line.
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April 9, 2018

Maricopa	Honda	Voter called the hotline and asked if he was registered to vote. Hotline volunteer looked up voter and told him he was registered to vote at Honda. Volunteer reminded voter of I.D. requirement and poll closing time.
Maricopa	Komatke	Voter received voting information with an incorrect spelling of her last name. She called the registrar to correct the spelling. The second mailing also contained the incorrect spelling. She called again and received a third voter I.D. card with the correct spelling. The voter I.D. card indicated she was at the right precinct. Poll workers told her that her name is not on the list. She tried all spellings, but was given a provisional ballot. She mentioned that she received early ballots to the first two incorrect spellings of her name, but she did not fill them out.
Maricopa	Komatke	Field volunteer reported a voter received voting information with an incorrect spelling. Called the hotline, but could not find her on the V.A.N. at all.
Maricopa	Komatke	Field volunteer and hotline volunteer checked and verified voter's registration and polling location.
Maricopa	Komatke	Tribal police officer was parked in the parking lot of the polling place for about an hour. Poll workers were complaining.
Maricopa	Komatke	Voters who lived and had always voted in District 6 were told that their polling precinct was District 7. Voters were very upset. Gila River had addressed this issue with the county after the previous election. However, the polling locations still had not been adjusted. Voters were leaving District 6 without voting and some were not going to District 7 to vote.
Maricopa	Komatke	Voter was given a provisional ballot because her ID address did not match her voting address. Field volunteer and hotline volunteer worked with voter to determine whether voter had any other I.D. with her voting address. They advised voter that her provisional ballot would count once her signature was verified. They also advised that voter should update her voting address to match her current mailing and I.D. address as soon as possible.
Maricopa	Komatke	Voter sought assistance from field volunteer. She was not registered on the registration roll or online. Field volunteer called the hotline. Hotline volunteer could not find anyone with her name registered in Maricopa County, although they did find two people with that name registered outside the county. Field volunteer confirmed that voter lived in Maricopa County. Voter submitted a provisional ballot.
Maricopa	Komatke	Voter called to verify where she was registered. Hotline volunteer verified the voter's registration location

April 9, 2018

Maricopa	Komatke	Voter reported poll staff being very unhelpful and racist. The poll staff could not locate the voter on the active rolls. The voter had not voted in a few years, but was sure this was his polling location. A field volunteer escorted the voter to find out whether he was on the inactive list. The poll workers said they did not have access to the inactive list. He was listed as "dropped" in the V.A.N. Hotlines advised the voter to go back in the polls and request a provisional
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April 9, 2018

		ballot. The voter returned to the polls accompanied by a field volunteer and received a provisional ballot after requesting it several times.
Maricopa	Lehi	It was extremely dark outside the polling entrance. Many voters were using their flashlights on their phones to find the entrance.
Maricopa	Pecos Senior Center	Field volunteer reported an hour to hour-and-a-half wait to vote, despite previous settlement agreement that stated voters would not have to wait longer than 30 minutes to vote.
Maricopa	Pecos Senior Center	Field volunteer reported that the voting machine is right next to the door close to people waiting to vote, such that people could potentially see the ballots.
Maricopa	Pee-Posh Community Service Center	Voter asked field volunteer if she could vote in Arizona if she had recently moved to Arizona from California, and did not re-register in Arizona.
Maricopa	Pee-Posh Community Service Center	Two voters did not vote because the precinct workers were unable to determine where they were registered. A field volunteer offered to assist, but the pair said the precinct worker already tried and failed. They did not want to devote any more time. They were very frustrated.
Maricopa	Pee-Posh Community Service Center	Voter asked a field volunteer if he could vote without his tribal, state, or federal I.D. The field volunteer explained that he could vote with a conditional provisional ballot, but he would need to return to a verification center with ID verification within the next week. The voter said he would not be able to do that, and left without voting.
Maricopa	Unknown	Voter called the hotline to see if he was registered to vote. Hotline volunteers found that voter had been "dropped." Volunteers advised voter that they believed he was dropped because he had not voted within the past eight years.
Maricopa	Unknown	Voter on the permanent early voting list (P.E.V.L.) called the hotline on November 1, 2016 to report that she had not received her ballot. The Record's site said that it was mailed on October 31, 2016. The volunteer told her that she could go to any early voting location to vote as long as she did not turn in her mailed ballot.
Maricopa	Unknown	Voter was listed as inactive even though she voted in the last election. She said her I.D. has a different address than where she is registered, but that she had other documents that will allow her to vote at her polling precinct.

April 9, 2018

Maricopa	Unknown	Voter called the hotline to ask if she could vote in Coconino County where her tribe was and where she was currently located. Voter was registered in Maricopa and had a mail-in ballot but had left it at home. Hotline volunteer advised voter that she had to vote in the county where she was registered. Volunteer explained that she could drop off her ballot at any precinct in Maricopa County or vote at the precinct where she was registered.
Maricopa	Unknown	Voter called hotline to ask where she should vote. She had moved from Glendale to Phoenix and had updated her driver's license but not her registration. Hotline volunteer advised voter of her new

April 9, 2018

		polling location and advised that she should vote at new polling location and update her address.
Mohave		
Mohave	Unknown	Voter called to verify his registration.
Navajo		
Navajo	Hondah	A field volunteer called the hotline to report that he heard Hondah was turning people away and telling them that they had to vote in a different precinct. Though the voters were residents of Hondah home sites, they were not allowed to vote, and some had been dropped from the rolls. According to the inspector, it was because either there was an issue with the addresses matching and so the county dropped them from the rolls, or people registered at the DMV and the DMV was not completing registrations.
Navajo	Hondah	A field volunteer reported that a voter was registered but not on the rolls. A provisional ballot was provided to the voter.
Navajo	Hondah	Field volunteer reported polling location ran low on ballots. They got more ballots from Pinetop, but the Pinetop ballots included issues not relevant to Hondah voters.
Navajo	Kayenta	Voter was given directions to Kayenta polling place.
Navajo	Red Butte	Voter wanted to know if she could vote somewhere other than Red Butte at Navajo, where she is registered. Hotline volunteer told her that she could vote anywhere in Navajo county, but not outside the county.
Navajo	Red Butte	Hotline volunteer checked and verified early voter's ballot was received by county.
Navajo	Whiteriver	Field volunteer submitted two reports of voters complaining that poll workers did not tell them there were two sides to the ballot and they were not able to complete their ballots. Hotline volunteer advised field volunteer to speak with poll workers.
Navajo	Whiteriver	Elderly voter in a wheelchair had trouble accessing the voting center entrance because there were two steps and no ramp access. When the man exited he wheeled backwards. A bystander assisted him by picking up the back of the wheelchair and easing him to the ground.
Navajo	Whiteriver	Due to the lack of ramp access, voter with a walker required the assistance of three bystanders to enter and leave the precinct.
Navajo	Whiteriver	A field volunteer reported that a voter was denied a ballot. The voter said that his address and name did not match the rolls. The volunteer offered to help him and his wife, but he declined. He did not want to pursue getting a ballot and left without voting.
Navajo	Whiteriver	Field volunteer reported that there was only one way in and one way out of the parking lot, and there were traffic issues.

April 9, 2018

Navajo	Whiteriver	Voter called the hotline to inquire about her voting location. The hotline volunteer successfully assisted her.
Navajo	Unknown	Voter registered in Navajo County but was located in Phoenix and could not make it back to Navajo before the polls closed. He called the hotline to ask if he could vote in Phoenix.
Navajo	Unknown	Voter reported machinery malfunction in Navajo County and said that the workers were not offering "express ballots." Voter had to wait for over an hour to cast her ballot. Native Vote referred incident to an on-call attorney for follow-up.
Navajo	Unknown	Voter wanted to check where she was registered. Hotline volunteer checked V.A.N. and informed her she was registered in Rough Rock. She reported that she now lived in Window Rock but would drive to her polling place. She said she heard of the hotline through KTNN and liked the service, but wished she had earlier notice.
Navajo	Unknown	Voter wanted to know if she could vote in Maricopa County instead of Navajo County where she is registered. Hotline volunteer let her know that she can vote at any precinct in Navajo County, but her ballot would not count if she voted in Maricopa County.
Pima		
Pima	Pasqua Yaqui Tribal Center	Voters were given provisional ballots for being registered as an early voter. However, no one was turned away.
Pima	Pasqua Yaqui Tribal Center	Two (2) voters turned away for incorrect polling location, staff directed them to the correct polling location.
Pima	Sells District Office Conference Room	Voter was wearing a gun within the 75-foot line. The voter left before he could be approached.
Pima	Sells District Office Conference Room	Field volunteers received several questions such as: <ul style="list-style-type: none"> o Is an I.D. required to drop off an early ballot? Must it be inside the yellow envelope? o Can I vote here if I am registered in another county? o Can I take my child inside the polling location? o Can I leave blanks on my ballot? o How do I change my polling place for future elections? o Are you making sure "illegals" do not vote?
Pima	Unknown	Voter called to ask where she could vote. Voter was registered in Pima County, but was currently located in Pinal County. The voter

April 9, 2018

		wanted to know if she could vote at Gila River Indian Community in Pinal County. Hotline volunteer told her it would not count.
Pinal		
Pinal	Casa Blanca	Field volunteer reported two (2) voters were not offered a provisional ballot when their names did not appear on the roll. One voter chose to return home to retrieve his early ballot. The other declined to return to the polling place to request a provisional ballot, saying she should return later. The volunteer did not see either voter return.
Pinal	Casa Blanca	Field volunteer reported voter with a felony prior did not vote. Field volunteer advised that her rights should have been automatically restored with completion of probation and encouraged her to register for the next election.
Pinal	Casa Blanca	Field volunteer reported one voter had moved into precinct and changed her address at the DMV, but the Secretary of State website did not reflect this change. The voter went to her old precinct to vote.
Pinal	Casa Blanca	Field volunteer reported one voter had not moved, but her precinct location had changed. Poll workers directed him to new precinct.
Pinal	Casa Blanca	Field volunteer reported dismantling of the polling place (removal of signs) began shortly before closing at 7 p.m., but no voters showed up after that process began.
Pinal	Queen Creek	Voter called hotline to see if son was registered and to locate his precinct. Could not locate his records, but found the corresponding precinct to their Queen Creek address and advised them that he should at least get a provisional ballot.
Pinal	Sacaton	<p>Voter was denied a ballot and was not given a reason at the poll. Upon looking up her information, the hotline discovered that it may be a couple of different reasons:</p> <p>(1) If she is on the rolls, the V.A.N. shows her voter status as "applicant" and her address as last updated on 10/28/16 so the voter may not be registered.</p> <p>(2) If she is not on the rolls, but address does not match, the voter's addresses reasonably matched so she should get a regular ballot.</p> <p>Hotline volunteer advised she go back inside the poll to ask why she was denied a ballot.</p>

April 9, 2018

Pinal	Sells	Voter needed to know their polling location. Hotline volunteer successfully assisted.
Pinal	Unknown	Voter needed to verify registration. His registration was found to be inactive, but hotline volunteer advised him that voting again would return his status to active.
Unknown County		
Unknown	Unknown	Voter called to see if her ballot was counted. Hotline volunteer looked at V.A.N. and confirmed it was received by the county.
Unknown	Unknown	Voter called to find out if she was registered. Hotline volunteer looked her up in the V.A.N. and did not see her. Volunteer then looked her up on the S.O.S. website, which indicated there may be a mismatch and recommended calling them to get the matter resolved. Volunteer gave voter the number and told her to call back if she had any more problems.
Unknown	Unknown	Voter asked her polling place was. Volunteer looked her up in the V.A.N. and told her the polling location.
Unknown	Unknown	Voter registered in New Mexico wanted to know if he could vote in Arizona.

APPENDIX II
PROVISIONAL BALLOTS

Appendix II
Provisional Ballots

STATE GRAND TOTALS		
Total Provisional Ballots		100,098
Option if they cannot provide by on or off reservation:	Total Counted:	77,281
	Total Not Counted:	22,817
On Reservation	Total Cast:	541
	Total Counted:	529
	Total Not Counted:	12
Off Reservation	Total Cast:	3,520
	Total Counted:	3,480
	Total Not Counted:	40
Total Conditional Provisional Ballots		83
Option if they cannot provide by on or off reservation:	Total Counted:	27
	Total Not Counted:	46
On Reservation	Total Cast:	7
	Total Counted:	0
	Total Not Counted:	7
Off Reservation	Total Cast:	3
	Total Counted:	0
	Total Not Counted:	3

Appendix II
Provisional Ballots

Name of County	Apache County	
Person Providing Information	Student researcher received general provisional ballot report from county that does not distinguish on reservation or off reservation.	
Total Provisional Ballots	2,018	
Option if they cannot provide by on or off reservation:	Total Counted:	1,492
	Total Not Counted:	526
Total Conditional Provisional Ballots	County did not distinguish between conditional provisional and the regular provisional ballots.	

Reasons Rejected:

Early ballot 3
 Empty envelope 2
 Illegible 1
 Incomplete 13
 Not registered 286
 Not signed 10
 Voted early ballot 78
 Voted in wrong voting area 122
 Voted multiple ballots 1
 Wrong jurisdiction 10
 TOTAL 526

Appendix II
Provisional Ballots

Name of County	Cochise County	
Person Providing Information	Data obtained from Martha L. Rodriguez, Interim Director for County Elections & Special Districts. ¹	
Total Provisional Ballots	1,817	
	Total Counted:	1,633
	Total Not Counted:	184
Total Conditional Provisional Ballots	3	
Option if they cannot provide by on or off reservation:	Total Counted:	0
	Total Not Counted:	3

Reasons rejected:

Ballot went through DS200 8
 Spoiled envelope 4
 No information 1
 Voted an early ballot 14
 Not registered 149
 No I.D. provided 2
 Blank ballots 6
 TOTAL 184

¹ E-mail from Martha L. Rodriguez, Interim Director, Cochise County Elections & Special Districts, to Student Researcher (Feb. 24, 2017) (sent with attachments containing county-wide data concerning provisional ballots) (e-mail and documents on file with ASU's Indian Legal Clinic).

**Appendix II
Provisional Ballots**

Name of County	Coconino County	
Person Providing Information	Data obtained from Coconino election results webpage.	
Total Provisional Ballots	4,061	
On Reservation	Total Cast:	541
	Total Counted:	529
	Total Not Counted:	12
Off Reservation	Total Cast:	3,520
	Total Counted:	3,480
	Total Not Counted:	40
Option if they cannot provide by on or off reservation:	Total Counted:	4,009
	Total Not Counted:	52
Total Conditional Provisional Ballots	Data not available.e	

Reasons rejected:

Not Provided.

**Appendix II
Provisional Ballots**

Name of County	Gila County	
Person Providing Information	Data obtained from Gila County Elections Department website.	
Total Provisional Ballots	1,490	
On Reservation	Total Cast:	Information not available
	Total Counted:	73
	Total Not Counted:	Information not available
Off Reservation	Total Cast:	Information not available
	Total Counted:	1,257
	Total Not Counted:	Information not available
Option if they cannot provide by on or off reservation:	Total Counted:	1,330
	Total Not Counted:	160
Total Conditional Provisional Ballots	0	

Rejection Reasons:

Early Ballot/Multiple Ballots 13
 Empty Affidavit 2
 Incomplete Affidavit 1
 No Identification or Insufficient Identification 14
 No Signature 2
 Not Registered 72
 Wrong Precinct/Jurisdiction 56
 TOTAL 160

Appendix II
Provisional Ballots

Name of County		Graham County
Person Providing Information		Data obtained from Graham County through Freedom of Information Act ("FOIA") request. ²
Total Provisional Ballots		194
On Reservation	Total Cast:	3
	Total Counted:	1 ₃
	Total Not Counted:	2
Off Reservation	Total Cast:	191
	Total Counted:	136
	Total Not Counted:	55
Total Conditional Provisional Ballots		2
On Reservation	Total Cast:	1
	Total Counted:	0
	Total Not Counted:	1
Off Reservation	Total Cast:	1
	Total Counted:	0
	Total Not Counted:	1

Reasons rejected:

Not provided.

² Response from Graham County to ASU's Indian Legal Clinic, Voting Statistics from 2016 General Elections (on file with author).

³ County responded "1" to FOIA questionnaire, but the attached raw data indicated that 2 votes were counted. A clerical error likely accounts for the discrepancy.

**Appendix II
Provisional Ballots**

Name of County	Greenlee County	
Person Providing Information	Data obtained from General Election official results found on county recorders webpage.	
Total Provisional Ballots	150	
Option if they cannot provide by on or off reservation:	Total Counted:	148
	Total Not Counted:	2
Total Conditional Provisional Ballots	22	
Option if they cannot provide by on or off reservation:	Total Counted:	22
	Total Not Counted:	0

Reasons rejected:

Not provided.

**Appendix II
Provisional Ballots**

Name of County	La Paz County	
Person Providing Information	Data obtained from Kevin Scholl, La Paz Elections Director.	
Total Provisional Ballots	379	
On Reservation	Total Cast:	175
	Total Counted:	161
	Total Not Counted:	14
Off Reservation	Total Cast:	204
	Total Counted:	164
	Total Not Counted:	40
Option if they cannot provide by on or off reservation:	Total Counted:	325
	Total Not Counted:	54
Total Conditional Provisional Ballots	1	
Option if they cannot provide by on or off reservation:	Total Counted:	0
	Total Not Counted:	1

Reasons rejected:

Voted early ballot 4
 Incomplete ballot form 2
 Missing ballot 1
 Registered after cut-off 4
 No signature 1
 Not registered 21
 Illegible 1
 Wrong precinct 20
 TOTAL 54

**Appendix II
Provisional Ballots**

Name of County	Maricopa County	
Person Providing Information	Ray from Maricopa County Elections.	
Total Provisional Ballots	52,173	
Option if they cannot provide by on or off reservation:	Total Counted:	36,923
	Total Not Counted:	15,250

Reasons rejected:

Not registered 8,594
 Incomplete info on provisional form 863
 Not eligible for this election (registered too late) 2,901
 Early ballot sent and returned 388
 Wrong polling place 2,197
 Insufficient I.D. after Election Day 307

**Appendix II
Provisional Ballots**

Name of County	Mohave County	
Person Providing Information	Data obtained from Kristi Blair, Mohave County Recorder.	
Total Provisional Ballots	4,088	
On Reservation	Total Cast:	47
	Total Counted:	36
	Total Not Counted:	11
Off Reservation	Total Cast:	4,048
	Total Counted:	3,654
	Total Not Counted:	387
Option if they cannot provide by on or off reservation:	Total Counted:	3,690
	Total Not Counted:	398
Total Conditional Provisional Ballots	Data not available.	

Rejection Reasons:

Not Registered
Voted Early Ballot
Wrong Precinct
Incomplete or unsigned ballot

Appendix II
Provisional Ballots

Name of County	Navajo County	
Person Providing Information	Data obtained from County Official, and information available on County webpage. ⁴	
Total Provisional Ballots	1,115	
On Reservation	Total Cast:	804
	Total Counted:	253
	Total Not Counted:	551
Off Reservation	Total Cast:	311
	Total Counted:	128
	Total Not Counted:	183
Total Conditional Provisional Ballots	8	
On Reservation	Total Cast:	6
	Total Counted:	0
	Total Not Counted:	6
Off Reservation	Total Cast:	2
	Total Counted:	0
	Total Not Counted:	2

Reasons rejected:

Voted early ballot 75

I.D. not provided 8

Not registered 649

Incomplete 2

⁴E-mail from Lynnie Bielefeldt, Vote Registration Coordinator, Navajo County Recorder's Office, to Student Researcher (Feb. 22, 2017) (sent with attachments containing county-wide data concerning provisional ballots) (on file with ASU's Indian Legal Clinic); see also Navajo County, Election, Election Results Archive 2016, *SOI/C Complete Official*, (Nov. 21, 2016, 9:06 AM) <http://www.navajocountyaz.gov/Departments/Elections/Election-Results>.

Appendix II
Provisional Ballots

Name of County	Pima County	
Person Providing Information	Data obtained from Pima County elections results webpage.	
Total Provisional Ballots	21,333	
On Reservation	Total Cast:	565
	Total Counted:	
	Total Not Counted:	
Off Reservation	Total Cast:	
	Total Counted:	
	Total Not Counted:	
Option if they cannot provide by on or off reservation:	Total Counted:	18,110
	Total Not Counted:	3,223
Total Conditional Provisional Ballots	44	
Option if they cannot provide by on or off reservation:	Total Counted:	5
	Total Not Counted:	39

Reasons rejected:

Could not confirm identity 6
 Provisional not signed 62
 Registered after cut-off date 373
 Registration cancelled 521
 Voted early ballot 168
 Voted multiple ballots 30
 Voted in wrong area 1,150
 Voter not registered 792

**Appendix II
Provisional Ballots**

Name of County	Pinal County	
Person Providing Information	Data obtained from county webpage and official canvass results.	
Total Provisional Ballots	8,444	
On Reservation	Total Cast:	200
	Total Counted:	173
	Total Not Counted:	27
Off Reservation	Total Cast:	8,244
	Total Counted:	7,285
	Total Not Counted:	956
Option if they cannot provide by on or off reservation:	Total Counted:	7,461
	Total Not Counted:	983
Total Conditional Provisional Ballots	Data not available.	

Reasons rejected:

Not registered
Voted in wrong precinct
Voted early ballot
Incomplete
No signature
No I.D. Provided
Voted wrong ballot
Void

Appendix II
Provisional Ballots

Name of County	Santa Cruz County
Person Providing Information	Data was obtained from the county website and the published election canvass.
Total Provisional Ballots	Not reported.
Total Conditional Provisional Ballots	Not reported.

Appendix II
Provisional Ballots

Name of County	Yavapai County	
Person Providing Information	Data obtained through a public data request to Les Bowen, Yavapai County Elections, and official results at county elections webpage.	
Total Provisional Ballots	1,399	
On Reservation	Total Cast:	243
	Total Counted:	117
	Total Not Counted:	126
Off Reservation	Total Cast:	1,156
	Total Counted:	531
	Total Not Counted:	625
Option if they cannot provide by on or off reservation:	Total Counted:	648
	Total Not Counted:	751
Total Conditional Provisional Ballots ³	3	
Option if they cannot provide by on or off reservation:	Total Counted:	0
	Total Not Counted:	3

Reasons rejected:

Already voted 27
 Incomplete ballot form 6
 4 not eligible 4
 3 no I.D. provided 3
 4 no signature
 703 not registered 703
 4 wrong jurisdiction 4

³ See survey response from Yavapai County (on file with ILC).

Appendix II
Provisional Ballots

Name of County	Yuma County	
Person Providing Information	Data obtained from e-mails with County Officials and Election Results available at County Webpage.	
Total Provisional Ballots	1,437	
On Reservation	Total Cast:	22
	Total Counted:	Data not available.
	Total Not Counted:	Data not available.
Off Reservation	Total Cast:	972
	Total Counted:	Data not available.
	Total Not Counted:	Data not available.
Option if they cannot provide by on or off reservation:	Total Counted:	994
	Total Not Counted:	443
Total Conditional Provisional Ballots	0 ⁷	

Reasons rejected:

Voted an early ballot
 I.D. not provided
 Illegible
 Incomplete
 Not registered
 Registered after the cut-off date.

⁶E-mail from Lori Aguilar, Voter registration Coordinator, Yuma County, to Student Researcher (March 22, 2017) (e-mail on file with ASU's Indian Legal Clinic); *see also* Yuma County Election Results Archive, 11/08/06 General Election Statement of Vote Cast, (Nov. 18, 2016, 3:18 PM)

<http://www.yumacountvaz.gov/government/election-services/election-results-archive>.

⁷E-mail from Lori Aguilar, Voter Registration Coordinator, Yuma County, to Student Researcher (March 22, 2017) (Stating one reason for rejecting ballots included failure to provide identification, and that "Conditional Provisionals – mean the voter did not have any identification to present to the poll worker on Election day") (e-mail on file with ASU's Indian Legal Clinic); but see Yuma County Election Results Archive, 11/08/06 General Election Statement of Vote Cast, (Archived Election data does not separately distinguish any conditional ballots apart from total reported provisional ballots) (Nov. 18, 2016, 3:18 PM)

<http://www.yumacountvaz.gov/government/election-services/election-results-archive>.

APPENDIX III
VOTER TURNOUT

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Navajo	#03 - Canyon De Chelly, Chinle Community Center; US Hwy 191, Chinle, AZ 86503	Apache	3664	1750	47.76
Navajo	#05 - Chinle, Chinle Community Center; US Hwy 191, Chinle, AZ 86503	Apache	1850	884	47.78
Navajo	#10 - Cornfields, Cornfields Chapter House; 8 miles S. of Burnside Junction N15, Ganado, AZ 86505	Apache	726	425	58.54
Navajo	#11 - Cottonwood, Cottonwood Senior Center; Rt. 4 Cottonwood Chapter premises, Chinle, AZ 86503	Apache	1372	736	53.64
Navajo	#13 - Dennehotso, Dennehotso Chapter House; 1/2 mile SW of Dennehotso School, Dennehotso, AZ 86535	Apache	1037	526	50.72
Navajo	#19 - Fort Defiance, Fort Defiance Chapter House; Navajo Route 112, Fort Defiance, AZ 86504	Apache	2769	1786	64.5
Navajo	#22 - Ganado N., Ganado Uni. School District (Fieldhouse); Hwy 264, Ganado, AZ 86505	Apache	755	401	53.11
Navajo	#23 - Ganado S., Ganado Chapter House; Chapter Dr. Hwy 264, Ganado, AZ 85936	Apache	1201	625	52.04
Navajo	#27 - Houck, Houck Chapter House; Exit 348, Houck, AZ 86506	Apache	1101	609	55.31
Navajo	#29 - Kinlichee, Kinlichee Chapter House; 8 miles E. of Ganado, 27 Miles W. of W/R, Kinlichee, AZ	Apache	988	636	64.37
Navajo	#31 - Klagnetoh, Klagnetoh Chapter House; 15 miles S. of State Hwy 264 on Hwy 191, Ganado, AZ 86505	Apache	854	499	58.43
Navajo	#33 - Lukachukai, Lukachukai Chapter House; 1/2 mile S. of N12 Mile Post 1, Lukachukai, AZ 86507	Apache	1785	875	49.02
Navajo	#35 - Lupton, Tsesiani Multipurpose Bldg; I-40 Exit 357 Rt 12, Lupton, AZ	Apache	663	358	54
Navajo	#39 - Many Farms, Many Farms Senior Center; Hwy 191 W. of N. Route 59, Many Farms, AZ 86538	Apache	1824	876	48.03

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Navajo	#41 - Mexican Water, Mexican Water Chapter House; Hwy 160-County Road 5056, Mexican Water, AZ	Apache	244	109	44.67
Navajo	#43 - Nazlini, Nazlini Senior Center; 500 Yards N. of the Nazlini Chapter House within Chapter compound, Nazlini, AZ 86540	Apache	1047	539	51.48
Navajo	#46 - Oak Springs, Oak Springs Chapter House; 8 miles N. of Lupton, Ch & I-40, Exit 357, 11 miles N. on N-12, Window Rock, AZ 86515	Apache	465	289	62.15
Navajo	#48 - Puerco E., Nahata Dziil Commission Governance; Red Sand View Drive, Sanders, AZ 86512; and #49 - Puerco W., Nahata Dziil Commission Governance; Red Sand View Drive, Sanders, AZ 86512	Apache	1418	810	57.12
Navajo	#51 - Red Mesa, Red Mesa School Conference Room; Hwy 160 Mile Post 448, Red Mesa, AZ 86514	Apache	390	133	34.1
Navajo	#52 - Red Valley, Christian Reform Church; Rt. N-13, N. of Red Valley Trading Post, Red Valley, AZ 86544	Apache	883	411	46.55
Navajo	#54 - Rock Point, Rock Point Senior Center; Hwy 191, Rock Point, AZ 86545	Apache	1331	664	49.89
Navajo	#56 - Rough Rock, Rough Rock Chapter House; Hwy 8066, Chinle, AZ 86503	Apache	844	443	52.49
Navajo	#58 - Round Rock, Round Rock Chapter House; 1/2 Mile E. of Junction 191, Round Rock, AZ 86547	Apache	944	487	51.59
Navajo	#65 - St. Michaels, St. Michaels Chapter House; Hwy 264 Across HIS Building, St. Michaels, AZ	Apache	1919	1127	58.73
Navajo	#67 - Sawmill, Sawmill Chapter House; Mile Post 14 on N-7 (Across from Sawmill Primary School), Sawmill, AZ	Apache	698	456	65.33
Navajo	#74 - Steamboat, Steamboat Chapter House; Hwy 264, Mile Post 426, Steamboat, AZ	Apache	1264	731	57.83

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Navajo	#76 - Sweetwater, Sweetwater Chapter House; 14 miles S. of Red Mesa Store, Teec Nos Pos, AZ 86514	Apache	772	357	46.24
Navajo	#78 - Tachee, Blue Gap/Tachee Chapter House; Blue Gap, AZ 86520	Apache	647	304	46.99
Navajo	#80 - Teec Nos Pos, Teec Nos Pos Chapter House; Hwy 160 BIA School Rd #N5114, Teec Nos Pos, AZ 86514	Apache	873	418	47.88
Navajo	#84 - Wheatfields, Tsailé, Wheatfields Chapter House; Rt. 12 & Rt. 64 - 8 miles S. on Rt. 12, Tsailé, AZ 86556	Apache	1538	847	55.07
Navajo	#86 - Wide Ruins, Wide Ruins School Gym; 18 miles N. of I-40 Hwy 191, Chambers, AZ 86502	Apache	735	416	56.6
Navajo	#88 - Window Rock, Navajo Nation Museum; Hwy 264 and Postal Loop Rd, Window Rock, AZ 86515	Apache	1718	990	57.63
White Mountain Apache	#37 - McNary, McNary Community Center- 103 South Caddy St., McNary, AZ 85930	Apache	188	90	47.87
Havasupai	#60 - Havasupai, Havasupai Tribe New Building; Supai Village, AZ	Coconino	129	38	29.46
Hopi	#70 - Moenkopi, Upper Moenkopi Community Center; Upper Moenkopi Village	Coconino	463	174	37.58
Navajo	#42 - Bodaway, Bodaway Chapter House; E. of Trading Post	Coconino	1058	673	63.61
Navajo	#43 - Cameron, Cameron Senior Citizen Center	Coconino	977	632	64.69
Navajo	#47 - Coppermine, Coppermine Chapter House; 22 miles S. of Page	Coconino	522	346	66.28
Navajo	#48 - Coalmine, Coalmine Chapter House; 16 miles SE of Tuba City; 15.5 miles E. on Hwy 264	Coconino	298	211	70.81
Navajo	#61 - Inscription House, Inscription House Chapter House; 5 miles N. Hwy 98 on N-16	Coconino	634	420	66.25
Navajo	#65 - Kaibeto, Kaibeto Senior Citizen Center; 1/2 mile E. of Hwy 98, Kaibeto, AZ	Coconino	1283	740	57.68

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Navajo	#67 - Lechee, Lechee Chapter; R-20 Coppermine Rd., Lechee, AZ 86040	Coconino	999	546	54.65
Navajo	#69 - Leupp, Leupp Chapter House; Leupp, AZ 86035	Coconino	1323	782	59.11
Navajo	#71 - Navajo Mountain, Community Arizona Warehouse; 5 miles S. of Chapter House	Coconino	133	89	66.92
Navajo	#88 - Tolani Lake, Tolani Lake Chapter House; Tolani Lake	Coconino	445	300	67.42
Navajo	#90 - Tonalea, Tonalea Senior Citizen Center; 1/2 mile Route N-21 off Hwy 160, Tonalea	Coconino	1816	1119	61.62
Navajo	#93 - Tuba City NE, Tuba City Jr High School; E. Fir St.	Coconino	1141	588	51.53
Navajo	#94 - Tuba City NW, Tuba City Primary School; Maple St.	Coconino	748	409	54.68
Navajo	#95 - Tuba City S., Tuba City High School; 67 Warrior Dr.	Coconino	3645	1877	51.5
San Carlos Apache	#410 - San Carlos, Rice Gym; Mohave Ave. & Yavapai St, San Carlos	Gila	2377	1175	49.43
Tonto Apache	#205 - Payson No. 2, St. Philip's Catholic Church; 511 S St. Phillips Street, Payson, AZ	Gila	1747	1437	82.26
White Mountain Apache	#400 - Canyon Day, Canyon Day Jr. High School; 4621 S. 9th Street, Cedar Creek, AZ 85941	Gila	555	352	63.42
White Mountain Apache	#405 - Carrizo, Assembly of God Church; 124 V10 Rd Show Low, AZ 85901	Gila	56	36	64.29
San Carlos Apache	#11 - Bylas, Robert Olivar Sr. Learning Center; Hwy 70 Bylas AZ 85530	Graham	Data not reported.	Data not reported.	Data not reported.
San Carlos Apache	#16 - Peridot, San Carlos Recreation & Wildlife Conf. Room; Hwy 70 Peridot AZ 85542	Graham	Data not reported.	Data not reported.	Data not reported.
Colorado River Indian Tribes	#51 - Parker, United Methodist Church; 1300 Ocotillo Ave., Parker, AZ 85344	La Paz	3012	1861	61.79
Colorado River Indian Tribes	#52 - Poston, La Pera Elementary School; 19121 Tahbo Rd., Poston, AZ	La Paz	361	212	58.73

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Colorado River Indian Tribes	#54 - Upriver; La Paz County Boating Safety and Training Center, 8484 Riverside Dr., Parker AZ.	La Paz	1734	1246	71.86
Fort McDowell Yavapai Nation	#0231 - Fort McDowell; Fort McDowell Indian Comm Rec Ctr - 16402 N. McDowell Rd. AZ 85264	Maricopa	551	252	45.74
Gila River Indian Community	#0340 - Komatke, Dist 6 Community Service Center; 5230 W. St. Johns Road, Laveen, AZ 85339	Maricopa	762	347	45.54
Gila River Indian Community	#0478 - Pee Posh, Dist 7 Community Svc Ctr (CONV); 8201 W. Baseline Rd Laveen AZ 85339	Maricopa	356	168	47.19
Salt River Pima Maricopa Indian Community	#0305 - Honda, Salt River Pima Community Center; 10000 E McDowell Rd., Scottsdale, AZ 85256	Maricopa	3581	1802	50.32
Pascua Yaqui Tribe	#0273- Guadalupe, El Tianguis Mercado; 9201 S. Avienda Del Yaqui, Tempe, AZ 85283	Maricopa	3006	1597	53.13
Salt River Pima Maricopa Indian Community	#0354 - Lehi, Lehi School (near but OFF RESERVATION); 2555 N. Stapley Dr. Mesa, AZ 85203	Maricopa	2474	1655	66.9
Tohono O'odham nation	#0290 - Hickiwan, Kaka Village Community Center; 1 Kaka Village, Gila Bend, AZ 85333	Maricopa	49	37	75.51
Tohono O'odham nation	#0549 - San Lucy, San Lucy Dist Admin Bldg.; 1216 N 307th Ave Gila Bend AZ 85337	Maricopa	159	82	51.57
Tohono O'odham	#0249 - Gila Bend, Gila Bend Town Hall; 644 W. Pima St., Gila Bend, AZ 85337	Maricopa	801	481	60.05
Salt River Pima Maricopa Indian Community	#0315- Indian Springs, Mesa Education Center (near but OFF RESERVATION); 855 W. 8th Ave., Mesa, AZ 85210	Maricopa	4602	2588	56.24

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Fort Mojave	#212 - Mohave Valley; RiverPointe Southern Baptist Church, 1421 E. Commercial St. Mohave Valley, AZ 86440; First Baptist Church, 5360 Calle Valle Vista, Ft. Mohave, AZ; Mohave Valley Assembly of God, 10138 Mountain View Rd. Mohave Valley, AZ	Mohave	12402	8432	67.99
Fort Mojave	#222 - Topock, Golden Shores Fire Department; 12950 Oatman Hwy, Topock, AZ 86436	Mohave	1269	858	67.61
Hualapai	#224 - Peach Springs, Peach Springs Elementary School; 403 Diamond Creek Rd, Peach Springs, AZ 86434	Mohave	617	241	39.06
Kaibab-Paiute	#223 - Moccasin; Colorado City Community Center (near but OFF RESERVATION), 45 W Johnson Ave, Colorado City, AZ; Colorado City Town Hall, 25 S Central St., Colorado City, AZ	Mohave	151	71	47.02
Hopi and Navajo (Contains a Superprecinct)	#4- Black Buttes; Hopi LDS Church, State Rt 264, mile Marker 394, Polacca, AZ 86042; Kykotsmovi Community Center, 100 Main St., Kykotsmovi, AZ; Sipaulovi Yuth and Elderly Building, Across from Second Mesa Day School, Sipaulovi, AZ; Birdsprings, Little singer School, Rt on IR71N 5 miles to Little Singer School, South of Birdsprings Chapter House; Dilkon, Dilkon Chapter House; Teesto, Teesto Chapter House	Navajo	8883	5119	58.15

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Navajo (Superprecinct)	#1- Red Butte- Black Mesa Chapter House, 21 Miles N of Pinon Bashas on Rt. 8066; Chilchimbeto, Chilchimbeto Chapter house; Forest Lake, Forest Lake Chapter House; Kayenta, Kayenta Chapter House, US Hwy 163; Low Mountain, Low Mountain Chapter House; Pinon, Pinon Chapter House; Shonto, Shonto Chapter House; Whippoorwill Springs, Whippoorwill Springs Chapter House	Navajo	12200	6026	49.39
Navajo (Superprecinct)	#2 Painted Desert- Greasewood, Greasewood Chapter House (Meeting Room), Greasewood, AZ; Whitecone, Whitecone Chapter House	Navajo	1547	895	57.85
Navajo (Superprecinct)	#6 Stone Butte- Stone Butte Chapter House, 17 miles N of Hopi Cultural Center	Navajo	778	354	45.5
Navajo (Superprecinct)	#5 Cedar Valley- Indian Wells, Indian Wells Chapter House, Indian Wells, AZ; Jeddito, Jeddito Chapter House, 1 mile east of Holbrook Junction	Navajo	1974	1144	57.95
Navajo	#78 - Tachee - Blue Gap, Whippoorwill Springs Chapter House	Apache	647	304	46.99
White Mountain Apache (Superprecinct)	#14 Sunrise - Cibecue, Cibecue Complex, 6 West 3rd Street, Cibecue, AZ; Hon-Dah, R.V. Park, 1 Hwy 73 (SR260 & ST 73); Whiteriver USD Admin., 963 N. Chief Avenue, Whiteriver, AZ	Navajo	12320	7842	63.65
Pascua Yaqui Tribe	#110 - Pascua Yaqui Tribe Council Chambers; 7474 S. Camino de Oeste	Pima	1951	974	49.92
Tohono O'odham Nation	#003 - Schuk Toak District Office; Highway 86, Mile Post 126.5	Pima	280	189	67.5
Tohono O'odham Nation	#004 - Sells District Office; Arizona Hwy 86 and Mile Post 112	Pima	1299	713	54.89
Tohono O'odham Nation	#071 - Chukut Kuk District; Federal Route 2, Vamori Village	Pima	185	129	69.73

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Tohono O'odham Nation	#076 - Baboquivari District Office; Federal Route 19 & Federal Route 10	Pima	392	256	65.31
Tohono O'odham Nation	#135 - Pisinemo District; W. Highway 86, Route 21	Pima	208	174	83.65
Tohono O'odham Nation	#136 - Hickiwan District; Indian Route 34, Vaya Chin Village- Kiohod Tonlik Ki	Pima	196	106	54.08
Tohono O'odham Nation	#137 - Gu Vo District Office Compound; Indian Route 1, Mile Post 19, Gu Vo Village - Gu Vo District Compound Conference Room	Pima	180	108	60
Tohono O'odham Nation	#138 - Gu Achi District; Santa Rosa Community, Santa Rosa Multipurpose Building	Pima	592	344	58.11
Tohono O'odham Nation	#236 - San Xavier District; 2018 W. San Xavier Road, San Xavier District Center	Pima	1038	574	55.3
Ak-Chin Indian Community	#77 - Ak Chin Community, Ak-Chin Service Center; 48227 W. Farrell Road, Maricopa, AZ 85139	Pinal	410	234	57.07
Gila River Indian Community	#29 - Sacaton, Sacaton District #3 Service Center; Church and Canal Street, Sacaton, AZ 85147	Pinal	998	458	45.89
Gila River Indian Community	#60 - Blackwater, Blackwater District #1 Service Center; 1060 W. Blackwater School Rd., Coolidge, AZ 85128	Pinal	657	362	55.1
Gila River Indian Community	#61 - Santan, District #4 Service Center; 1510 W. Sesame (San Tan Rd.), Sacaton, AZ 85147	Pinal	801	374	46.69
Gila River Indian Community	#62 - Casa Blanca, District #5 Veterans Memorial Building; 3500 W. Casa Blanca Road, Sacaton, AZ 85147	Pinal	853	390	45.72
Tohono O'odham Nation	#53 - Chui Chu, Chui Chu Senior Center; Federal Route 15 & St. Augustine St., 85122	Pinal	225	124	55.11
Yavapai-Apache	Camp Verde United Methodist Church; 480 S 1st St. Camp Verde, AZ 86322	Yavapai	Data not reported.	Data not reported.	Data not reported.

Appendix 2016 Voter Turnout					
Tribe	Polling Location	County	Registered Voters	Ballots Cast	Voter Turnout
Yavapai-Prescott	Yavapai College; 1100 E. Sheldon Street, Prescott, AZ	Yavapai	Data not reported.	Data not reported.	Data not reported.
Yavapai-Prescott	Prescott Community Center; 1280 E Rosser St, Prescott, AZ 86301	Yavapai	Data not reported.	Data not reported.	Data not reported.
Yavapai-Prescott	Clark Memorial Clubhouse; 19 N Ninth St., Clarkdale, AZ	Yavapai	Data not reported.	Data not reported.	Data not reported.
Fort Yuma-Quechan (Off-Reservation Vote Center)	#8- Yuma County Food Bank; 2404 S. Engler Ave. (24th & Engler), Yuma, AZ 85365	Yuma	1100	833	75.73
Fort Yuma-Quechan (Off-Reservation Vote Center)	#15- Gila Ridge High School; 7150 E. 24th Street, Yuma, AZ 85365	Yuma	2546	1696	66.61
Cocopah (Off-Reservation Vote Center)	#27- Somerton Library; 240 Canal Street, Somerton, AZ	Yuma	966	597	61.8

Appendix 2016 Voter Turnout				
Voter Turnout by Tribe				
Tribe	VAP	Registered Voters	Ballots Cast	Voter Turnout
Ak-Chin Indian Community	863	410	234	57.07%
Cocopah Tribe	1004	966	597	61.80%
Colorado River Indian Tribes	7321	5107	3319	64.99%
Fort McDowell Yavapai Nation	747	551	252	45.74%
Fort Mojave Tribe	1345	Data not reported.	Data not reported.	Data not reported.
Gila River Indian Community	8613	4427	2099	47.41%
Havasupai Tribe	13	129	38	29.46%
Hopi Tribe	6425	9346	5293	56.63%
Hualapai Tribe	982	617	241	39.06%
Kaibab-Paiute Tribe	199	Data not reported.	Data not reported.	Data not reported.
Navajo Nation	67252	70487	37972	53.87%
Pascua Yaqui Tribe	2438	4957	2571	51.87%
Quechan Tribe	916	3646	2529	69.36%
Salt River Pima-Maricopa Indian Community	5638	3581	1802	50.32%
San Carlos Apache Tribe	6632	2377	1175	49.43%
San Juan Southern Paiute	N/A	Data not reported.	Data not reported.	Data not reported.
Tohono O'odham Nation	7355	5604	3317	59.19%
Tonto Apache Tribe	95	1747	1437	82.26%
White Mountain Apache Tribe	9,948	13119	8320	63.42%
Yavapai-Apache Nation	622	Data not reported.	Data not reported.	Data not reported.
Yavapai-Prescott Tribe	247	Data not reported.	Data not reported.	Data not reported.

*Based on Reservation Census Data obtained from the US Census Bureau (2013-2017 ACS Survey 5-year Estimates) except Navajo Nation Reservation VAP based on 2010 Census Data to obtain the Arizona portion of the Reservation. Note that the Native Americans are a hard-to-count population and are often undercounted, and even more so during the American Community Survey process.

APPENDIX IV
EARLY VOTING CHART

Arizona Early Voting Locations for the 2016 General Election

*indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Apache	County Recorder Office in St. Johns, AZ (Off Reservation)	Oct 12, 2016-November 4, 2016 Monday-Thursday 6:30 am- 5:30 pm Closed Fridays, except October 28 and November 4 from 6:30 am- 5:30pm	Springerville-26 Eager-28 Alpine-47 McNary*-66	
	Chinle Voter Outreach office in Chinle, AZ (On Reservation- Navajo)	Oct 12, 2016- November 3, 2016 Monday-Thursday 7:00 am-5:30 pm	Tsile*-25 Rough Rock*-31 Teec-Nos-Pos*- 95	
	Ft. Defiance Outreach Office in Ft. Defiance, AZ (On Reservation- Navajo)	Oct 12, 2016- November 3, 2016 Monday-Thursday 7:00 am-5:30 pm	Window Rock*-6 Ganado*-33 Steamboat*-53	
Cochise	Cochise County Recorder's Office in Bisbee, AZ (No Reservations in this County)	October 12, 2016- November 4, 2016 Monday-Friday 8:00 am -5:00 pm	Raso-96 mi Portal- 86 mi McNeal-27 mi	This early voting location operated from October 28, 2016, until November 4, 2016. This location was open Monday through Friday from 8:00 a.m. to 5:00 p.m. (Telephone Interview with Sue, Cochise County Recorder's office (Nov. 4, 2016). The County webpage, however, provided information that this location opened on October 12, 2016. (Cochise County Elections Department, https://www.cochise.az.gov/elections-special-districts/2016-election-cycle-dates-information (last visited Nov. 4, 2016).

Arizona Early Voting Locations for the 2016 General Election

*indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Coconino	Coconino County Elections Office in Flagstaff, AZ (Off Reservation)	Monday-Friday 8:00 am - 5:00 pm Extended early voting hours: Saturday, October 22 8:00 am – Noon October 29 8:00 am – Noon October 31-November 3 8:00 am-7:00 pm	Williams-33 Winona-16 Tolani Lake*-62 Tonalea*-100 Forest Lakes-153	All Precincts can vote at this location
	Tuba City Elections Office Basement of Tuba City Library Tuba City, AZ (On Reservation-Navajo and Hopi)	Monday - Friday 8:00 am - 5:00 pm Daylight Savings Time Extended early voting hours: Saturday, October 29 (8:00 am – 12:00 pm AZ Time 9:00 am – 1:00 pm Daylight Savings Time)	Cameron*-26 Tonalea*-25 Gray Mountain*-35 Coppermine-43 Leupp-102 Hotevilla*47 Shongopovi*-60	Early Voting location for the following precincts: Bodaway 42, Cameron 43, Coppermine 47, Coalmine 48, Inscription House 61, Kaibeto 65, Lechee 67, Leupp 69, Moenkopi 70, Navajo Mountain 71, Tolani Lake 88, Tonalea 90, Tuba City Northeast 93, Tuba City Northwest 94 & Tuba City South 95
	Williams City Hall In Williams, AZ (Off Reservation)	Monday - Thursday 7:30 am - 5:00 pm	Kaibab Estates-16 Parks-16 Red Lake-11	Early Voting location for the following precincts: Kaibab North 64, Kaibab West 66, Parks 79, Williams Northside 98 & Williams Southside 99
	Sedona City Hall In Sedona, AZ (Off Reservation)	Monday - Thursday 7:00 am - 6:00 pm	Sedona- 0-19	Early Voting location for the following precincts: Sedona North 82 & Sedona South 83
	Page City Hall in Page, AZ (Off Reservation- Page borders the Navajo Reservation)	Monday - Thursday 7:00 am - 6:00 pm	Lechee*-11 Kaibeto*-35 Navajo Mountain*-84 Inscription House*-55	Early Voting location for the following precincts: Page Central 72, Page East 73, Page South 74, Page West 75, Lechee 67, Bodaway 42, Coppermine 47, Inscription House 61, Kaibeto 65 & Navajo Mountain 71

Arizona Early Voting Locations for the 2016 General Election

*Indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Coconino	Fredonia City Hall in Fredonia, AZ (Off Reservation)	Monday – Thursday 7:30 am – 5:30 pm	Fredonia- 0-7 North Rim-67	Early Voting location for the following precincts: Fredonia 58
	Grand Canyon Schools Superintendent's Office in Grand Canyon, AZ (Off Reservation)	Monday-Thursday 6:00 am-4:30 pm	Tusayan-14	Early Voting location for the following precincts: Grand Canyon 59 & Tusayan 97
	Leupp Chapter House in Leupp, AZ (On Reservation-Navajo)	October 24, 25 and 27 only 8:00 am – 12:00 pm AZ Time 9:00 am – 1:00 pm Daylight Savings Time	Tolani Lake*-16	Early Voting location for the following precincts: Leupp 69 & Tolani Lake 88
	Havasupai in Village of Havasupai (On Reservation- Havasupai)	October 12, 2016 only	Havasupai Village*- 1	This information was not advertised in County's election materials
Gila	Gila County Recorder's Office in Globe, AZ (Off Reservation)	October 12, 2016-November 4, 2016 8:00 am-5:00 pm	Claypool-5 Winkelman-36 Cutter*-8 Carrizo*-62 San Carlos*-21 Young-67	
	Gila County Recorder's Office in Payson, AZ (Off Reservation)	October 12, 2016-November 4, 2016 8:00 am-5:00 pm (closed 12-1 daily)	Star Valley-5 Gisela-17 Young-59 Carrizo*-112 San Carlos*-101 Carrizo*-27	
	Canyon Day Jr. High School (On Reservation-White Mountain Apache)	October 19, 2016 10:00 am-2:00 pm (Special Early Voting Location)		Early Voting location for the following precincts: Canyon Day and Carrizo
	Town Hall in Town of Winkelman (Off Reservation)	October 18, 2016 10:00 am-2:00 pm (Special Early Voting Location)	Winkelman- 1	Early Voting location for the following precincts: Copper Basin
	Roosevelt Baptist Church (Off Reservation)	October 20, 2016 9:00 am-11:00 am (Special Early Voting Location)	Roosevelt-9	Early Voting location for the following precincts: Roosevelt

Arizona Early Voting Locations for the 2016 General Election

**indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Gila	Tonto Basin Chamber of Commerce (Off Reservation)	October 20, 2016 1:00 pm-3:00 pm (Special Early Voting Location)	Tonto Basin-1	Early Voting location for the following precincts: Tonto Basin
	First Baptist Church of Pine (Off Reservation)	October 25, 2016 10:00 am-2:00 pm (Special Early Voting Location)	Strawberry- 3	Early Voting location for the following precincts: Pine-Strawberry
	San Carlos Public Library in San Carlos, AZ (On Reservation- San Carlos)	October 26, 2016 10:00 am-2:00 pm (Special Early Voting Location)	"Beverly Hills"-17	Early Voting location for the following precincts: San Carlos
	Pleasant Valley Community Center (Off Reservation)	October 27, 2016 10:00 am-2:00 pm (Special Early Voting Location)	Young- 47 Pleasant Valley-1	Early Voting location for the following precincts: Young
Graham	Graham County Recorder's Office in Safford, AZ (Off Reservation)	October 12, 2016 -November 4, 2016 8:00 am- 5:00 pm (Special Early Voting Location)	San Jose-8 Eden-17 Bylas*-33 Gilson Wash*-62 Peridot*-57	Early Voting location for all precincts
	Robert Oliver Sr. Learning Center in Bylas, AZ (On Reservation-San Carlos)	November 1, 2016 9:00 am-1:00 pm	Gilson Wash*-30 Peridot*-19	
Greenlee	Greenlee County Recorder's Office in Clifton, AZ (Off Reservation)	October 12, 2016-November 4, 2016 8:00 am - 5:00 pm		This is the sole early voting site for Greenlee County.
La Paz	Unknown Off Reservation Site Poston, AZ (On Reservation- CRIT)	Unknown	Parker*-15 Poston*- 1	
	County Recorder's Office Parker, AZ (On Reservation- CRIT)	October 12- November 4, 2016 Monday-Thursday 7:00am-6:00pm Closed Fridays except for October 28 and November 4 from 8:00am-5:00pm	Poston*-15 Parker*-1	

Arizona Early Voting Locations for the 2016 General Election

*Indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
	Recorder's/Elections Office 510 South 3rd Avenue, Phoenix (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm Saturday, October 22 & 29, 8 AM - 5PM		
	Recorder's/Elections Office-Mesa 222 East Javelina, Mesa (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm Saturday, October 22 & 29, 8 AM - 5PM		
	Recorder's/Elections Office-Downtown 111 South 3rd Avenue, Phoenix (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm Saturday, October 22 & 29, 8 AM - 5PM		
	Avondale City Clerk's Office 11465 W Civic Center Dr, Avondale (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm Saturday, Oct 22, 10AM - 3PM Saturday, Oct 29, 10AM - 3PM		
Maricopa	Ability 360 Center 5025 E Washington St, Phoenix (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	Buckeye City Clerk's Office 530 E Monroe Ave, Buckeye (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm		
	Carefree Town Clerk's Office 8 Sundial Cir, Carefree (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Friday 8:00 am- 4:30 pm		

Arizona Early Voting Locations for the 2016 General Election

*Indicates on reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Maricopa	Cave Creek Town Clerk's Office 37622 N Cave Creek Rd, Cave Creek (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 5:00 pm		
	Chandler City Clerk's Office 175 S Arizona Ave, Chandler (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	El Mirage City Clerk's Office 12145 NW Grand Ave, El Mirage (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	Fountain Hills Town Clerk's Office 16705 E Ave of the Fountains, Fountain Hills (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm		
	Gila Bend Town Clerk's Office 644 W Pima St, Gila Bend (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 4:00 pm		
	Gilbert Municipal Center 50 E Civic Center Dr, Gilbert (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm		
	Glendale-Ability360 Center 6829 N 57TH Ave, Glendale (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	Litchfield Park City Clerk's Office 214 W Wigwam Boulevard, Litchfield Park (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	Maryvale-Cartwright School District Annex Bldg 3401 N 67TH Ave, Phoenix (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		

Arizona Early Voting Locations for the 2016 General Election

*Indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Maricopa	Mesa City Clerk's Office 20 E Main St, Mesa (Off Reservation)	October 12, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm		
	Phoenix City Hall 200 W Washington St, 15th Floor, Phoenix (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm		
	Scottsdale City Hall/Election's Office 3939 N Drinkwater Blvd, Scottsdale (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 9:00 am- 5:00 pm		
	South Mountain Community Center 212 E Alta Vista Rd, Phoenix (Off Reservation)	October 17, 2016 –November 4, 2016 Monday-Friday 10:00 am- 6:00 pm Friday, November 4, 10AM - 5PM Saturday, October 22, 10AM - 4PM Saturday, October 29, 10AM - 4PM		
	Surprise City Clerk's Office 16000 N Civic Center Plaza, Surprise (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 5:00 pm Saturday, October 22, 10AM - 3PM Saturday, October 29, 10AM - 3PM		

Arizona Early Voting Locations for the 2016 General Election

*indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Maricopa	Tempe-ASU Safety Escort Office 330 E University Dr, Tempe (Off Reservation)	October 12, 2016 –November 4, 2016 Monday - Wednesday, 10:00 am – 6:00 pm Thursday- Friday, 10:00 am – 5:00 pm		
	Tempe Public Library 3500 S Rural Rd, Tempe (Off Reservation)	October 12, 2016 –November 4, 2016 Monday - Wednesday, 10:00 am – 6:00 pm Thursday- Friday, 10:00 am – 5:00 pm		
	Wickenburg Town Clerk's Office 155 N Tegner St, Wickenburg, AZ (Off Reservation)	October 17, 2016 –November 3, 2016 Monday-Thursday 7:00 am- 6:00 pm		
	Youngtown Town Clerk's Office 12030 N. Clubhouse Square, Youngtown, AZ (Off Reservation)	October 12, 2016 –November 4, 2016 Monday-Friday 8:00 am- 4:00 pm		
Mohave	Kathryn Heidenreich Senior Center Kingman, AZ (Off Reservation)	October 12-November 4, 2016 Monday-Friday 9:00 am-5:00 pm	Wikieup-53 Valentine-30 Fort Mohave*-48 mi Peach Springs*-47mi Kaibab Indian Reservation*-288mi	
	Mohave County Library in Bullhead City, AZ (Off Reservation)	October 12-November 4, 2016 Monday-Friday 9:00 am-4:00 pm October 29, 2016 from 10:00 am – 3:00 pm November 1, 2016 & November 3, 2016 from 9:00 am-7:00 pm	Oatman-24 Yucca-57 Fort Mohave*-7 Peach Springs*-88 mi Kaibab Indian Reservation*-285	

Arizona Early Voting Locations for the 2016 General Election

*indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Mohave	Mohave County Library in Lake Havasu City, AZ (Off Reservation)	October 12-November 4, 2016 Monday-Friday 9:00 am-5:00 pm October 29, 2016 from 10:00 am – 3:00 pm November 1, 2016 & November 3, 2016 from 9:00 am-7:00 pm	Yucca-36 Signal-71 Fort Mohave*-55 Peach Springs*- 110 Kaibab Indian Reservation*- 336	
	Bashas at the Pinon Shopping Center in Pinon, AZ (On Reservation- Navajo)	October 12, 2016 10:00 am-6:00 pm	Low Mountain*-20	
Navajo	Bashas at the Kayenta Shopping Center in Kayenta, AZ (On Reservation- Navajo)	October 14, 2016 & October 21, 2016 10:00 am-6:00 pm	Chilehinhito*-25 Tsegi*-29	
	Bashas at the Dilkon Shopping Center in Dilkon, AZ (On Reservation- Navajo)	October 26, 2016 11:00 am-6:00 pm	Indian Wells*-13 White Cone*-29	
	Kayenta Justice of the Peace Office in Kayenta, AZ (On Reservation- Navajo)	October 12, 2016 – November 4, 2016 Monday-Friday 8:00 am-5:00 pm	Chilehinhito*-25 Tsegi*-29	
	White River Social Services Building in White River, AZ (On Reservation- White Mountain Apache)	October 19, 2016 11:00 am-6:00 pm	McNary*-22	
	Circle M Store in Polacca, AZ (On Reservation- Hopi)	October 28, 2016 11:00 am-6:00 pm	Walp*-12 Keams Canyon*-12	
	Navajo County Recorder's Office in Show Low, AZ (Off Reservation)	October 12, 2016 – November 4, 2016 Monday- Wednesday 8:00 am-5:00 pm	Pinetop-Lakeside-10 McNary*-19 Chilehinhito*-119	

Arizona Early Voting Locations for the 2016 General Election

*Indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Navajo	County Recorder's Office in Holbrook, AZ (Off Reservation)	October 12, 2016 – November 4, 2016 Monday-Friday 8:00 am-5:00 pm	Winslow-33 Whiteriver-180 Chilchinbito*-152	
	County Recorder's Main Office in Tucson, AZ (Off Reservation)	October 12, 2016 – November 4, 2016 Monday-Friday 8:00 am-5:00 pm Emergency Voting: Saturday, November 5, 2016 9:00 am – 2:00 pm Monday, November 7, 2016 8:00 am – 5:00 pm	Tortolita-15 Marana- 23 Sahuarita-21 Pascua Yaqui*-13 San Rafael* 78 Pisinemo*-109	
Pima	County Recorder's East Side Annex Office in Tucson, AZ (Off Reservation)	October 12, 2016 – November 4, 2016 Monday-Friday 8:00 am-5:00 pm Emergency Voting: Saturday, November 5, 2016 - 9:00 am – 2:00 pm Monday, November 7, 2016 - 8:00 am – 5:00 pm	Pascua Yaqui*-23 Tortolita-23 Sahuarita-26 San Rafael*-88 Pisinemo*-116	

Arizona Early Voting Locations for the 2016 General Election

* indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Pima	County Recorder's South Side Annex Office in Tucson, AZ (Off Reservation)	October 12, 2016 – November 4, 2016 Monday-Friday 8:00 am-5:00 pm Emergency Voting: Saturday, November 5, 2016 - 9:00 am – 2:00 pm Monday, November 7, 2016 - 8:00 am – 5:00 pm	Pascua Yaqui*-10 Tortolita-23 Sahuarita-15 San Rafael*-80 Pisinemo*-108	
	Ascension Lutheran Church and School in Tucson, AZ (Off Reservation)	October 17, 2016 – November 4, 2016 Monday-Friday 9:00 am-5:00 pm	Pascua Yaqui*23 Tortolita-6 Sahuarita-31 San Rafael*-91 Pisinemo*-119	
	Sahuarita Town Hall in Sahuarita, AZ (Off Reservation)	October 17, 2016 – November 4, 2016 Monday-Friday 9:00 am-4:30 pm	Green Valley-9 Helvetia-25	
	U of A Campus in Tucson, AZ (Off Reservation)	October 17, 2016 – November 4, 2016 Monday-Friday 9:00 am- 5:00 pm	Sahuarita-23 Tortolita-16 Pisinemo*-111	
	Salazar-Ajo Library Ajo, AZ (Off Reservation)	October 31, 2016 – November 4, 2016 Monday-Friday 9:00 am- 5:00 pm	Why*-11 Pisinemo*-46	

Arizona Early Voting Locations for the 2016 General Election

*Indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Pima	Pascua Yaqui Tribe Radio Station near Tucson, AZ (On Reservation- Pascua Yaqui)	October 31 – November 1, 2016 & November 3, - November 4, 2016 9:00 am- 5:00 pm CLOSED November 2, 2016	Wellness Center*-1 Casino Del Sol*-1	
	Tohono O'odham High School at State Rt 86 Mile Marker 74 (On Reservation- Tohono O'Odham)	October 24- October 25, 2016 9:00 am- 4:00 pm	Pisinemo*-14 Why*-22	
	Gu Achi District Santa Rosa Multi-Purpose Building (On Reservation- Tohono O'Odham)	October 26, 2016 9:00 am- 4:00 pm	Ali Molina*-7 Topawa*-8 Why-62	
	San Xavier District Center (On Reservation- Tohono O'Odham)	October 27- October 28, 2016 9:00 am- 4:00 pm	Ali Molina*53 West Pima Mine Rd*-12	
	Legislative Chambers in Sells, AZ (On Reservation- Tohono O'Odham)	October 31- November 4, 2016 9:00 am- 4:00 pm	Ali Molina*-7 Topawa*-9 Why-62	
	Voter Registration Office in Florence, AZ (Off Reservation)	Monday – Friday 8:00 am- 5:00 pm	Coolidge-10 Randolph-15 Sacaton*-23	
	Pinal County Recorder's Office in Apache Junction, AZ (Off Reservation)	Monday – Friday 8:00 am- 4:30 pm	Gold Canyon-8 Queen Valley-23	
	Pinal County Recorder's Office in Casa Grande, AZ (Off Reservation)	Monday – Friday 8:00 am- 4:30 pm	Arizola-3 Sacaton*-14 Picacho-20	
	GRIC Governance Center in Sacaton, AZ (On Reservation- Gila River Indian Community)	November 3, 2016 9:00 am-4:00 pm	Blackwater*-10 Bapchule*-10	Special Early Voting Site
Pinal				

Arizona Early Voting Locations for the 2016 General Election

*indicates on-reservation

County	Early Voting Location	Operation Dates and Operating Hours	Average Distances to Communities	Misc.
Santa Cruz	Santa Cruz County Recorder's Office in Nogales, AZ (Off Reservation)	October 12, 2016-November 4, 2016 Monday – Friday 8:00 am- 5:00 pm	Sonoita-32 Canelo-50	
	Tubac Community Center (Off Reservation)	October 22, 2016 9:00 am- 12:00 pm	Rio Rico-14 Sonoita-48	
	Santa Cruz County Public Works Department in Rio Rico, AZ (Off Reservation)	October 22, 2016 2:00 pm- 5:00 pm	Tubac-13 Amado-18 Ruby-28	
	Patagonia Town Hall (Off Reservation)	October 29, 2016 9:00 am- 12:00 pm	Harshaw-8 Rio Rico-23 Amado-41	
	Sonoita Firehouse (Off Reservation)	October 29, 2016 2:00 pm- 5:00 pm	Elgin-9 Canelo-17 Harshaw-20	
Yavapai	1015 Fair St., Room 228 in Prescott, AZ (Off Reservation)	October 12, 2016-November 4, 2016 Monday – Friday 8:00 am- 5:00 pm	YPIT Govt. Offices- 1 Drake-36 Congress-57 Bagdad-63 Camp Verde*-44	
	10 S. 6th St in Cottonwood, AZ (Off Reservation)	October 12, 2016-November 4, 2016 Monday – Friday 8:00 am- 5:00 pm	Camp Verde*-17 Drake-63 Congress-91	
	Yavapai-Apache Nation Community Center in Camp Verde, AZ (On Reservation- Yavapai-Apache Nation)	Unknown	Y-AN Housing Authority*-8	
	Yuma County Recorder's Office in Yuma, AZ (Off Reservation)	October 12, 2016- November 6, 2016 Monday-Friday and varying weekends 8:00 am- 5:00 pm	Cocopah Reservation*-10 Quechan Reservation*- 3 Fortuna Foothills-14 Palomas-76	

Arizona Early Voting Locations for the 2016 General Election
 *indicates on-reservation

Total Reservation Voting Locations

Tribe	Total on Reservation Early Voting Locations
Navajo	9
Tohono O'odham	4
Colorado River Indian Tribe	2
San Carlos Apache	2
Gila River Indian Community	1
Havasupai	1
Hopi	1
Pascua Yaqui Tribe	1
White Mountain Apache	1
Yavapai Apache Nation	1
Kaibab Paiute	0
Tonto Apache	0
Salt River Pima-Maricopa Indian Community	0
Ft. McDowell Yavapai Nation	0
Hualapai	0
Fort Mohave Indian Tribe	0
AK-Chin Indian Community	0
Yavapai-Prescott Indian Tribe	0
Quechan Tribe	0
Cocopah Tribe	0
Total On Reservation Early Voting Locations	23
Total Off Reservation Early Voting Locations	66

APPENDIX V
COUNTY SURVEY FORM

2016 GENERAL ELECTION SURVEY

Thank you for your participation in this survey. Please provide information for the following questions by **November 28, 2016**. Attach a separate page if additional space is needed. If you have any questions, please contact Patty Ferguson-Bohnee at pafergus@asu.edu or the Indian Legal Clinic at (480) 727-0420 or indianlegalclinic@asu.edu. Thank you.

1. What County is participating in this survey?

2. Does the County provide any election materials in languages other than English and Spanish? Please respond even if the County is not required to provide language coverage under federal law.

☐ YES ☐ NO

If Yes, please provide a list of other languages:

If No, please explain why:

3. Has the County translated any voting materials in any indigenous language in compliance with Section 203 of the Voting Rights Act? 28 C.F.R. § 55.4.

☐ YES ☐ NO

If yes, how is it translated? Check all that apply.

☐ Written Translation

☐ Bilingual poll workers

☐ Translator Provided at Polling Locations

If selected, which polling locations?

☐ Recorded Oral Translation

☐ Other

Please Explain:

If yes, what is translated? Check all that apply

- ☐ Voter Registration Information
- ☐ Voter Identification Information
- ☐ General Election Information
- ☐ Information on Early Voting
- ☐ Voting Instructions
- ☐ Early Voting Ballot
- ☐ General Election Ballot
- ☐ Elections Department Website
- ☐ Other, Please Explain:

4. Were ballots prepared and translated prior to October 12, 2016 for early voting in the general election?

☐ YES ☐ NO

If no, please explain why:

5. Are poll workers trained to be aware of Native American languages that are subject to the translation requirements, if covered, under Section 203 of the Voting Rights Act? 28 C.F.R. § 55.4.

☐ YES ☐ NO

If No, why?

6. What is the County's protocol if a Tribal voter needs language assistance at a polling location?

7. Were there/Will there be translators at polling locations during early voting and the November 8, 2016 general election?

☐ YES ☐ NO

If no, are alternative methods used?

☐ YES ☐ NO

If yes, check all that apply

☐ Audio

☐ Calls to Translators

☐ Other _____

8. How are translators selected?

9. How does the County make translators available?

10. Are there language outreach workers in the County Elections Department?

☐ YES ☐ NO

If yes, please provide their contact information.

11. Has the County reached out to Tribes in the County to request language translation assistance?

☐ YES ☐ NO

If Yes, what was the response given by each Tribe:

12. Have any of the Tribes in the County contacted the County Elections Department to request language assistance for voters on Election Day?

☐ YES ☐ NO

If Yes, what was the response given by the County to each Tribe:

13. What materials does the County send to voters regarding voter identification?

14. Does that information include the acceptable forms of tribal identification for Native Americans and that a tribal voter shall be issued a provisional ballot upon presenting one form of tribal identification with the voter's name? A.R.S. § 16-579(A) and SOS Manual, Chapter 10.

☐ YES ☐ NO

Please Explain:

15. Are poll workers trained on the identification requirement for Native American voters? A.R.S. § 16-579(A) and SOS Manual, Chapter 10.

☐ YES ☐ NO

16. Does the County have early voting polling locations for the November 8, 2016 general election?

☐ YES ☐ NO

If **yes**, how many and where are the polling locations? How long is each polling location open?

17. Are there **early voting polling locations** on each reservation in the County for the November 8, 2016 general election?

☐ YES ☐ NO

If **yes**, how many and where are the polling locations? For each site, please identify the dates and hours for each polling location.

18. How many **polling locations** will be located within each reservation in the County for the November 8, 2016 general election?

19. Which polling precincts are located on Indian reservations in the County for the November 8, 2016 general election?

October 1, 2019

**Written Testimony by Adrian Fontes, Maricopa County Recorder
submitted to the House Administration Committee Subcommittee
on Elections regarding the Congressional Field Hearing on Voting
Rights and Election Administration**

Chairwoman Fudge, Ranking Member Davis, and members of the committee, thank you for allowing us to submit written testimony on the subject of Voting Rights and Election Administration.

As a native Arizonan, born in the border town of Nogales and the first Latino elected to county-wide office in Maricopa County, I am a strong proponent of the Voting Rights Act and for breaking down the barriers to voting in the State of Arizona. In fact, it was the disastrous 2016 Presidential Preference Election in Maricopa County that solidified my decision to run for County Recorder.

As I testified to the Advisory Committee of the Civil Rights Commission in March 2018, the Shelby decision has left states like Arizona, previously under DOJ pre-clearance, to their own devices as it pertains to the conduct of elections. I applaud you for spending time in our state and looking into actions that our state legislature has taken enacting laws on elections administration, particularly in how it affects voters of racial and/or language minorities covered by the Voting Rights Act.

But it is also important to understand the efforts that County Recorders and Elections Officials have taken to mitigate those impacts and ensure that all eligible voters have access to voter registration and voting, while also doing the difficult job of ensuring our elections are protected against outside forces that strive to tamper with and undermine the bedrock of our democratic process.

In 2018, Maricopa County had the highest midterm election turnout in recent history. In 2014, voter turnout was 45.32%; in 2018 turnout jumped to 64.50%, with 1.45 million ballots cast, the most ever cast in a mid-term election. This is a 19.18 point or 42.32% increase.

To encourage this turnout, we have changed our voting models to respond to the needs of our voters with improved technologies and training. An increasing number of voters are choosing to sign up for the Permanent Early Voting List (PEVL), which means that whenever they are eligible to vote in an election, they are requesting that we send them a ballot by mail. From October of 2014 to October of 2018, the number of voters on PEVL increased from 43.85% to 71.86%. PEVL voters receive their ballot by mail, but still have many options in the way they chose to vote. Voters can choose to mail their ballot back or drop it

off at any voting location in Maricopa County. They can also choose to come in to any early voting location or Election Day voting location and vote in person.

If a voter chooses to vote in person, we are also encouraging turnout by making that process easier. In 2018, we introduced our own county-developed SiteBook check-in stations, which was recognized by the National Association of Counties with an Achievement Award in Information Technology. In addition to allowing voters to check in more quickly thereby reducing lines, SiteBooks allow poll workers to update a voter's address and/or check in real-time if a voter had returned their early ballot to the Elections Department, reducing the need for voters to vote a provisional ballot. While in 2014, there were 39,111 provisional ballots cast, in 2018 this number was reduced to only 16,409 – a reduction of 238%.

When we paired the SiteBooks with ballot-on-demand printers, it allowed us to provide the voter the correct ballot, no matter where the voter resides in Maricopa County, significantly reducing out of precinct provisionals and ensuring voters ballots count. This Vote Center model gave the individual voter 41 different possible locations to vote at on Election Day, their assigned Polling Place plus 40 Vote Centers. Thirty-five of these 40 vote centers were open the week before the election, giving voters even more time to vote. We also allowed emergency voting at 5 of these vote centers over the weekend and Monday before Election Day.

From expanding Curbside Voting and our Special Election Board Programs to offering large-format, Braille ballots for those that have vision challenges and audio ballots for a non-written language - voter access is expanding in Maricopa County. During the November 2018 election, we provided 628 large print and 22 Braille ballots, and sent teams of two workers of differing parties to assist over 250 voters vote their ballots.

Despite not being under DOJ pre-clearance, Maricopa County made the independent decision to significantly increase our voter outreach efforts. When I came into office, I hired a team of employees whose mission is to increase accessibility and the transparency of the Recorder's Office and Elections Department by reaching out to our underserved communities and future voters, and increasing voter registration through a deputy registrar program. Since 2017, the Community Relations Team has conducted 26 roundtable meetings and have 18 more planned before the 2020 election. Our Roundtable project allows us to sit and listen to members of historically under-served communities and directly address the challenges they are facing. It is just one way we involve the public to make better-informed decisions on how to administer elections. Our forward looking focus with an awareness of past disenfranchisement is how we run elections that better serve our voters.

One of the communities with whom we have focused our efforts is the Native American Community. We have held 5 roundtable meetings with 14 organizations represented, discussing topics such as voting in state and local elections versus tribal elections, training

of workers to recognize different tribal identification and effective ways for communication. It is very important to note that since before 2006, we have never reduced the number of polling locations on our Native American reservations. We also strive to ensure Native American workers are available at our polling locations. Additionally, despite O’odham losing section 203 coverage in 2016 according to the Census Bureau, we continue to provide translations of the ballot and materials on request.

We have done all this while also significantly upgrading our security to address cybersecurity and physical threats. In the last two years, we have completed terrorism vulnerability assessments, in-depth penetration testing and architectural design reviews of all computing systems, constructed a cutting edge secure IT security work area in our Elections Department, hired an IT security officer, and conducted training and testing of all staff regarding Phishing. We work closely with our Secretary of State’s Internet Security Office and the Arizona Counter Terrorism Information Center (our state’s Fusion Center), Terrorism Liaison Officers and the Department of Homeland Security. We have also developed plans to bolster physical and employee security and conducted staff-wide trainings on situational awareness and active shooters.

To accomplish much of this, we have relied on strong relationships with our partners on the State and Federal level, including those with the U.S. Elections Assistance Commission, the FBI and the Department of Homeland Security. The Help America Vote Act funds that were appropriated by Congress in 2018 and are currently being considered in this year’s appropriations bill are vital to these efforts.

The House of Representatives took the possible threats to our elections seriously and has acted to assist State and Local Elections official by providing \$600 million in this year’s appropriation bill. We thank you for your support, and implore you to work with the Senate to ensure this number is preserved. We also ask you to maintain the House language requiring that 50% of the funds be used by or on behalf of local elections, and that local elections officials be consulted in the development of the state’s plan for the use of these funds. This ensures the money goes where it is most needed – on the front lines of elections, and that the local elections officials there have a seat at the table when the plans to assist their efforts are developed.

In this era of voter skepticism about our institutions, we must all strive to ensure full and appropriately contextual information be available to the public. We want people to have and gain confidence in our election system. Again, we thank you for coming to Arizona, for allowing us to express our views, and for all you do to protect our democratic process.