

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**

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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

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