

ARIZONA STATE HEARING

Arizona State University College of Law
Tempe, Arizona
January 9, 2014

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State University

PANELISTS

Casey Dreher, Organizing Director, Arizona
Students' Association

Judith Dworkin, Navajo Election Administration
and Managing Partner, Sacks Tierney Arizona

Paul Eckstein, Attorney, Perkins Coie

Petra Falcon, Executive Director, Promise Arizona

LeNora Fulton, County Recorder, Apache County

Leonard Gorman, Director, Native Rights
Commission, Navajo Nation

Patty Hansen, Coconino County Recorder

Gregory Mendoza, Governor, Gila River Indian
Community

Nina Perales, Vice President of Litigation, Mexican
American Legal Defense and Education Fund

Peri Jude Radecic, Executive Director, Arizona
Center for Disability Law

John Sherman, Staff Attorney, Fair Elections Legal
Network

Alessandra Soler, Executive Director, ACLU of
Arizona

Raquel Teran, State Director, Mi Familia Vota

Steve Tittla, San Carlos Apache Tribe

Rev. Warren H. Stewart Sr., Senior Pastor, First
Institutional Baptist Church, Phoenix, Arizona

Sam Wercinski, Executive Director, Arizona
Advocacy Network.

PUBLIC TESTIMONY

AJ Bre'haut, U.S. Navy

Lydia Guzman, League of United Latin American
Citizens

Mel Hannah, Policy Advisor to Phoenix Mayor
Greg Stanton

Randall Holmes, Arizona Advocacy Network
Board

Greg Jones, Election Integrity Chairperson,
Maricopa County Democratic Party

Rivko Knox, Arizona League of Women Voters

Jim Maleaky, Democracy for America

Bishop Jeff Metcalfe, National Action Network

Tonya Norwood, President, National Organization
for Women

Rachel Phillips, Owner, Educated Souls, LLC

Michael Powell, Executive Director, Arizona Students Association

Vince Rabago, former Assistant Attorney General or Arizona

Martin Quezada, State Representative, District 29

Amy Umaretiya, student, Arizona State University

WRITTEN TESTIMONY

Robyn Prud'homme-Bauer,
President, League of Women

Voters of Arizona (testimony read
by Rivko Knox)

SUPPORTING ORGANIZATIONS (NOT EXHAUSTIVE)

ACLU of Arizona

Inter Tribal Council of Arizona, Inc.

Arizona Advocacy Network

Mexican American Legal Defense and Educational
Fund

Arizona Center for Disability Law

Arizona League of Women Voters

NAACP

Arizona State University Indian Legal Clinic

National Action Network

Arizona Students' Association

ARIZONA STATE HEARING HIGHLIGHTS

The second National Commission on Voting Rights hearing was held on Thursday, January 9, 2014 at the Sandra Day O'Connor College of Law in Tempe, Arizona. Approximately 70 people attended the hearing and heard from four panels of Arizona-based witnesses. Testimony topics included voting barriers for Native-American voters, Arizona's proof of citizenship law and its impact on Latino and naturalized-citizen voters, as well as the continued need for a preclearance process in light of recent United States Department of Justice (DOJ) objections.

I. Voting Barriers for Native-American Voters

Several witnesses testified about the continued barriers faced by Native-American voters in Arizona. According to Steve Titla of Titla & Parsi PLLC, there are 22 Native-American tribes in Arizona, and a significant portion of land in Arizona is located in Indian country.¹ On behalf of the Navajo Election Administration in Arizona, Judith Dworkin of Sacks Tierney testified that a significant portion of Native Americans live on reservations "where there are no paved roads, no electricity, no running water, no stores, no government facilities, no employment, no street addresses, no immediate access to the amenities that modern Americans take for granted."² These conditions present particular obstacles.

¹ Though the U.S. Bureau of Indian Affairs only recognizes 21 Native American tribes, see <http://www.bia.gov/cs/groups/public/documents/text/idcoo6989.pdf>, the Arizona Commission of Indian Affairs recognizes 22, see http://azcia.gov/tribes_of_arizona.asp.

² See also, "Ensuring Access to the Ballot for American Indians & Alaska Natives" by Tova Andrea Wang, which notes that American Indians and Alaska Natives are the racial/ethnic group with the greatest proportion of people living below the poverty level: <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>

Additionally, per Tittle, “[t]here have been widespread practices of discrimination against Native Americans in Arizona, and there have been numerous attempts to reduce the effectiveness of Native-American voting strength.” Leonard Gorman of the Navajo Nation Human Rights Commission recalled that no Native American has ever been elected to a statewide office in Arizona.

A. Standard Physical Addresses

One of the main issues discussed by several witnesses, including Gregory Mendoza, governor of the Gila River Indian Community, was the lack of standard physical addresses in Native communities. As a consequence of this, Native American voters are sometimes not included on the voter registration rolls and are turned away at the polls or made to rely on provisional ballots. Gorman also testified that in the 2008 Arizona election, the candidacy of Navajo candidates was challenged because the addresses on the signature petitions included post office boxes and not physical addresses.

B. Language Translations

Language accommodations are crucial to ensure access for minority language communities. Judith Dworkin, representing the Navajo Election Administration in Arizona, testified that “Most Native American Tribes retain their native language, many with limited or no knowledge of the English language.” While “[a]ll of the eleven counties covering the Navajo Nation [in Arizona, New Mexico and Utah] are required to provide language assistance under Section 203 of the Voting Rights Act... [l]anguage translations are not always available when early voting begins.”³ This failure to provide timely translations can result in the denial of access for voters with limited English proficiency.

C. Limited Early Voting

Dworkin also testified that limited early voting hours on reservations can lead more Navajo voters to vote on Election Day, which then presents additional challenges because while Arizona voters are not required to furnish identification (ID) during early voting, they are required to do so if they vote on Election Day.

³ See, Bureau of Census, *Voting Rights Act Amendments of 2006, Determinations under Section 203* http://www.census.gov/rdo/pdf/2011_26293.pdf. The 11 counties covering Navajo nation are Apache, Coconino and Navajo Counties, Arizona; Bernalillo, Cibola, McKinley, Rio Arriba, San Juan, Sandoval and Socorro Counties, New Mexico; and San Juan County, Utah.

D. Voter ID

In 2004, Arizona voters passed Proposition 200, a law that requires all Arizona voters to present ID at the polling place on Election Day. Titla of Titla & Parsi PLLC testified that this law “resulted in a sharp decrease in Indian voters in 2006 and disproportionately impacted Native Americans for several reasons,” including the following:

- Because of language translation issues, socioeconomic issues, and cultural reasons, Native Americans vote in person—as opposed to by mail, where voter ID is not required—in higher numbers than off-reservation voters.⁴
- Additionally, the types of ID initially accepted did not take into consideration the types of documents that are easily accessible to Native-American voters. According to Titla, “some Native American voters had a very difficult time obtaining a photo identification from the Arizona Department of Transportation. One voter went to the Department several times only to be turned away because she was born at home, and the Department would not accept her Certificate of Live Birth document issued by the Bureau of Indian Affairs.”

In light of these problems, Native American voters filed a lawsuit challenging the voter ID requirement under the Voting Rights Act. As Gorman testified, a settlement agreement was reached that expanded the types of ID accepted at the polls for Native American voters.⁵ Unfortunately, Titla went on to testify, “Native voters still have a hard time receiving a ballot at the polls. In some instances, the voters did have sufficient ID under the Special Procedures for Native American Voters, but the poll workers did not accept it.”

E. Redistricting

Testimony was also presented regarding the redistricting process. Titla stated that during the 2000 redistricting cycle, “advocates were unsuccessful in advocating for the San Carlos Apache Tribe to be included in the majority-minority legislative district,” which he argued resulted in the dilution of the Native-American vote. Finally, during the most recent redistricting cycle, the San Carlos Apache Tribe was included in the majority-minority district. Titla pointed out that “Because Arizona was covered by Section 5 of the Voting Rights Act, the Commission took potential retrogression of the Native American vote into consideration and sought to maintain a robust Native American majority-minority district. Without Section 5, it is not clear that similar measures would be taken to analyze the voting strength of Native American voters in Arizona.”

⁴ See Report of R. Anthony Sissons, *Geo-Demographic Expert for the Inter Tribal Council of Arizona, Inc. et al., Plaintiffs, Gonzalez v. State of Arizona*, 435 F. Supp. 2d 997 (D. Ariz. 2006).

⁵ See, *May 27, 2008 Stipulation of the Parties in Navajo Nation v. Brewer*, CV 06-1575-PHX-EHC.

II. Proof of Citizenship

Nina Perales of the Mexican American Legal Defense and Educational Fund testified about the burdens imposed by Proposition 200, a law passed by voters in 2004.⁶ Proposition 200, among other things, requires documentary proof of citizenship to register to vote. According to Perales, Proposition 200 has had a broad negative impact on voter registrants across Arizona. “Following enactment of Proposition 200, over 30,000 individuals were rejected for voter registration in Arizona [L]ess than one-third of the rejected registrants subsequently successfully registered to vote.” Voter registration in community-based drives also decreased by 44 percent following the enactment of Proposition 200.

Perales elaborated that “[d]espite its broad effects, however, Latinos have been particularly affected by the law. The voting restrictions imposed by Arizona’s Proposition 200, ostensibly to curb registration by immigrants who are not qualified to vote, come at a time when Latinos comprise Arizona’s fastest-growing citizen voting age population and Arizona is engulfed in an often heated debate about immigrants from Mexico living in the state.”

Perales, in particular, discussed the difficulties faced by naturalized citizens. Two of the forms of proof of citizenship listed by Proposition 200 are the naturalization certificate number and a driver’s license number. However, applicants using the naturalization certificate number have been rejected because that number cannot be used to confirm citizenship. Using the driver’s license is also sometimes insufficient because only those issued after 1996 are accepted. Furthermore, if the applicant was not a citizen at the time that he obtained his driver’s license, he will be listed as a foreigner in the driver’s license database—which in turn will lead to the rejection of his voter registration application.

Lastly, Perales pointed out that “[a] federal court in Arizona found that naturalized citizens will have difficulty registering with their driver’s licenses and are subsequently faced with either purchasing a new license or registering with the naturalization certificate (often in person).” The additional and unnecessary burdens faced by naturalized citizens, Perales argued, “are predictable and systemic to Proposition 200 and its implementation by Arizona election officials.”

III. DOJ Objections

Witnesses Paul Eckstein of Perkins Coie LLP and Alessandra Soler of the American Civil Liberties Union of Arizona testified about the continued need for preclearance and discussed recent DOJ objections.

⁶ See, <http://www.azsos.gov/election/2004/info/PubPamphlet/english/prop200.htm>

A. 2003

The most recent objection in Arizona came in 2003, when the Department of Justice under President Bush objected to proposed changes to elect board members of a joint technological education district—the Coconino Association for Vocations, Industry and Technology.⁷ The Department of Justice found that the change would have had a retrogressive effect, diminishing the opportunity for Native-American voters to elect a representative of their choice.

B. 2002

Per Soler of the ACLU, “Arizona’s past four statewide redistricting plans were rejected by the DOJ for discriminating against Latino and Native American voters.” In particular, in its objection to the 2001 state legislative redistricting plan, the DOJ found that the Arizona Independent Redistricting Commission did “not m[e]et its burden of establishing that minority voters will continue to be able to elect candidates of their choice in five districts.”⁸

Mr. Eckstein elaborated. In his words, the 2002 objection denying preclearance to the Redistricting Commission’s 2001 legislative plan stated that the plan:

“failed to provide a sufficient number of districts that allowed Hispanic voters to elect the candidates of their choice. Specifically, [the Department of Justice] stated that the Redistricting Commission’s 2001 Final Map had a retrogressive effect on Hispanic voting strength in at least three of five legislative districts. In one of those districts, District 23, the Department of Justice found that the Redistricting Commission’s reduction of Hispanic voting strength not only violated Section 5 of the Voting Rights Act of 1965 but ‘may also have been taken, at least in part, with a retrogressive intent.’”⁹

Per Eckstein, after this 2002 objection, a three-judge district court approved an interim map for use in the 2002 elections but ordered the redistricting commission to draw permanent legislative lines for the 2004 through 2010 elections.¹⁰ In redrawing the lines, Eckstein claims, the commission made the Latino voting-age population more concentrated in one district, which “packed” the district. The packing, in turn, denied Latinos the fair opportunity to elect state representatives of their choice in a second district.

⁷ See also, DOJ’s Feb. 4, 2003 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/L_030204.pdf

⁸ See also, DOJ’s May 20, 2002 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/L_020520.pdf

⁹ See also, DOJ’s May 20, 2002 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/L_020520.pdf

¹⁰ See also, Arizona State Senate Nov. 30, 2012 Issue Brief:

<http://www.azleg.gov/briefs/Senate/SCF%20ISSUE%20BRIEF.pdf>

Per Soler, the following objections were also issued during the preclearance process:

1992: A 1992 redistricting plan for Yuma County, along with an associated plan for precinct and polling place changes, was rejected by the DOJ because it diluted minority voting strength.¹¹

1991: As Soler recalled, “[v]oter registration challenge and purge procedures were prevented from going into effect in 1991 in Coconino County, where a significant portion of the county’s 29% Native American population does not read or write English.”¹²

1985: A 1985 plan to eliminate two polling places, implement a five-polling place rotation system, and reduce polling hours in western Apache County was rejected because it had a discriminatory impact on Native-American voters.¹³

Notably, Soler also pointed out that “on August 29, 2013, Arizona Attorney General Tom Horne issued a memo stating that six previously enacted state statutes and policies that were submitted for preclearance but later withdrawn were effective” as of the date of the *Shelby County v. Holder* decision. Among those statutes was a 2010 law that created two additional at-large seats on the Governing Board of the Maricopa Community College District. “Because at-large districts compared to single-member districts have been shown to dilute minority voting strength and make it more difficult for minorities to elect the candidates of their choice, the Department of Justice raised questions about what prompted the changes,” Soler explained. “The law was never enforced because it failed to receive preclearance. However, in his August 29 memo, Horne announced that the state would be moving forward to fill the two new seats in the November 2014 election.”¹⁴

¹¹ See also, DOJ’s Sept. 28, 1992 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/AZ-1160.pdf

¹² See also, DOJ’s Nov. 4, 1991 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/AZ-1110.pdf

¹³ See also, DOJ’s Aug. 16, 1985 determination letter:

http://www.justice.gov/crt/records/vot/obj_letters/letters/AZ/AZ-1070.pdf

¹⁴ See also, Attorney General Thomas C. Horne’s Aug. 29, 2013 memo:

<https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2013/I13-008.pdf>