

Arizona Shelby Response Project: Modernizing Elections and Maximizing Voter Participation



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A Collaborative Effort by
Arizona Advocacy Foundation, One Arizona and the Inter Tribal Council of Arizona

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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. It exposes 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:

- More than 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 fraud⁹ 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

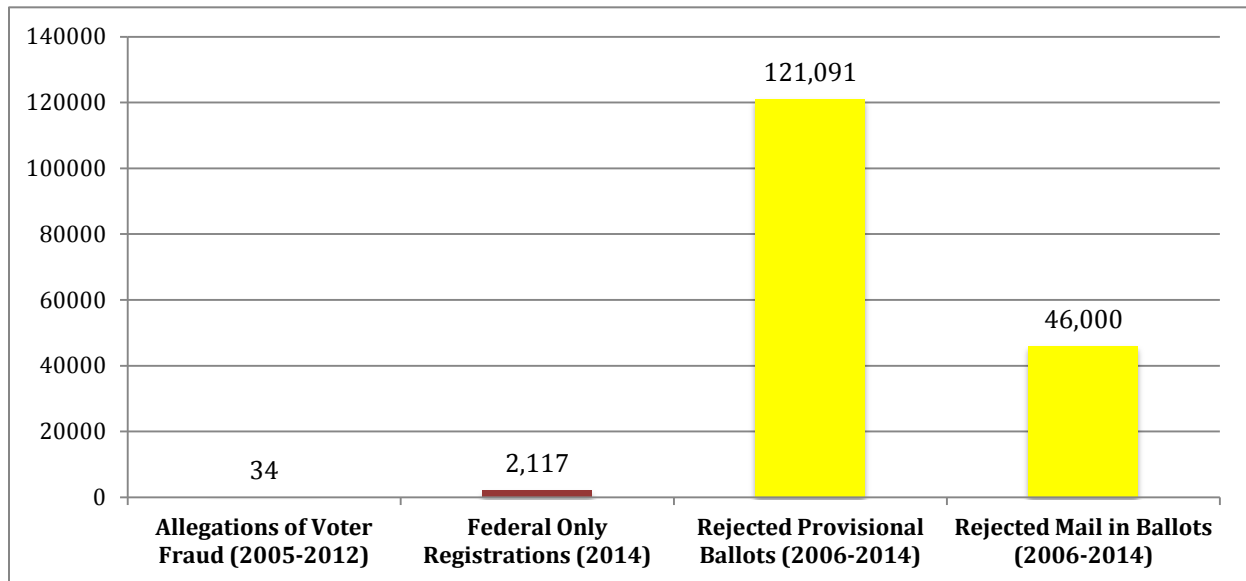
⁷ U.S. Election Assistance Commission: 2012 Election Administration and Voting Survey. A Summary of Key Findings, September 2013. Pg. 41 http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf

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?nclick_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.typepad.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

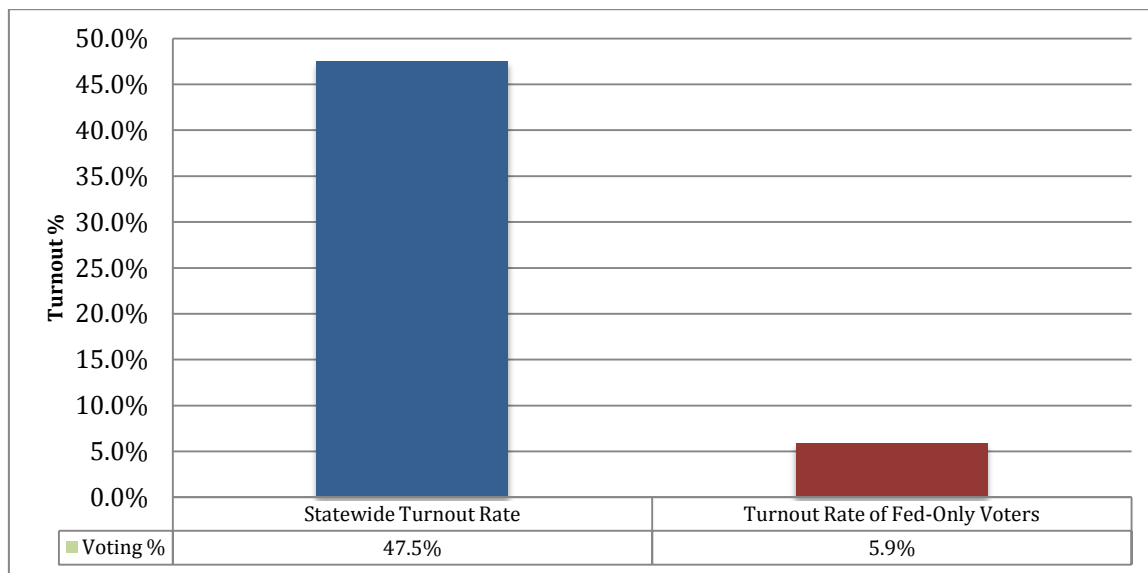
¹⁵ <https://www.brennancenter.org/sites/default/files/legal-work/129-1%20Memorandum%20of%20Decision.pdf>

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 2014,¹⁸¹⁹ 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/Page/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/>

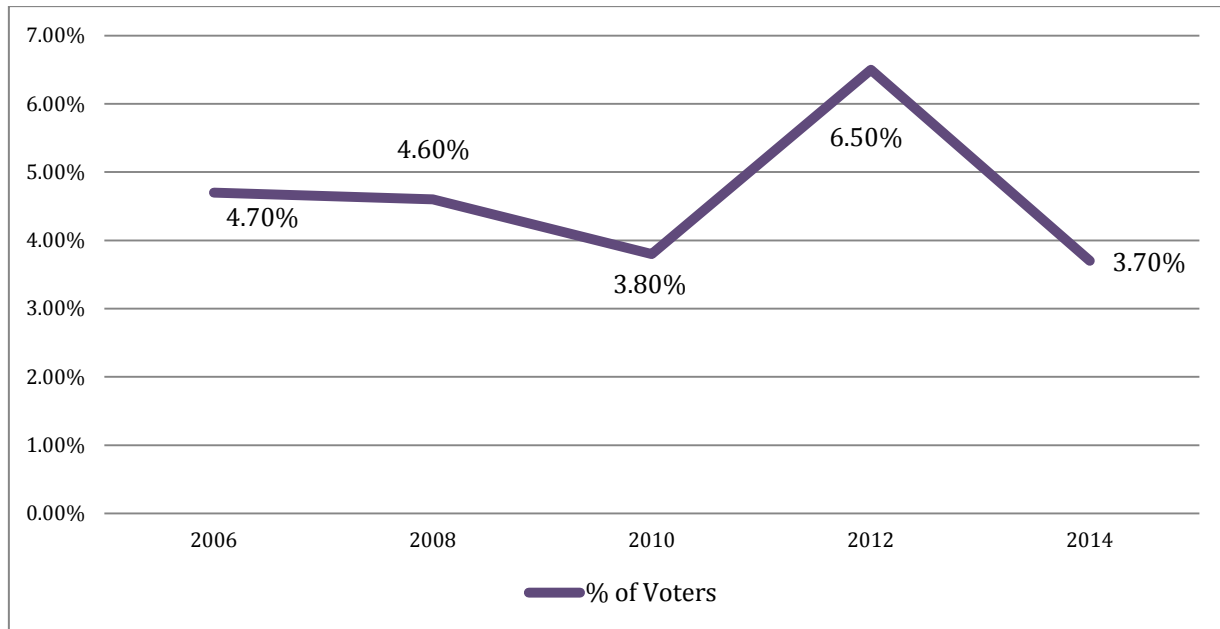
¹⁹ Duda, Jeremy, “Provisional Ballot Numbers Improve in 2014”. Arizona Capital Times Retrieved from <http://azcapitoltimes.com/news/2014/12/01/arizona-provisional-ballot-numbers-improve-in-2014-general-election/>

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 as 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”

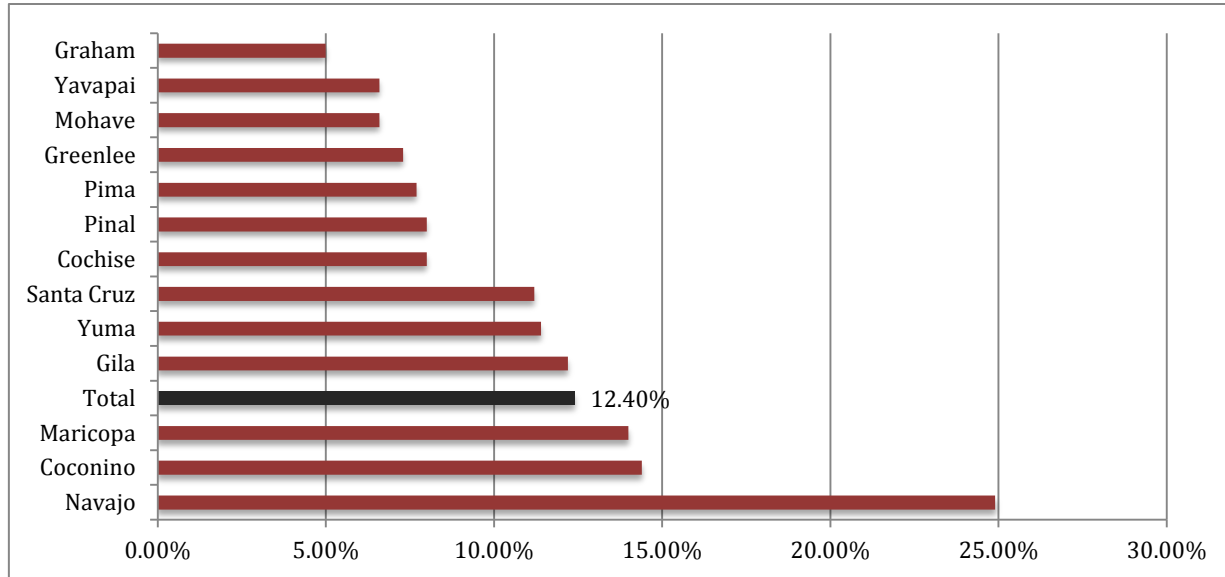
The Shelby field data reveal significant confusion among voters about why they had to vote a provisional ballot. Policy makers should be concerned that this type of confusion ultimately discourages voters and makes them less likely to participate in the future.

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/Page/990-050%20EAC%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

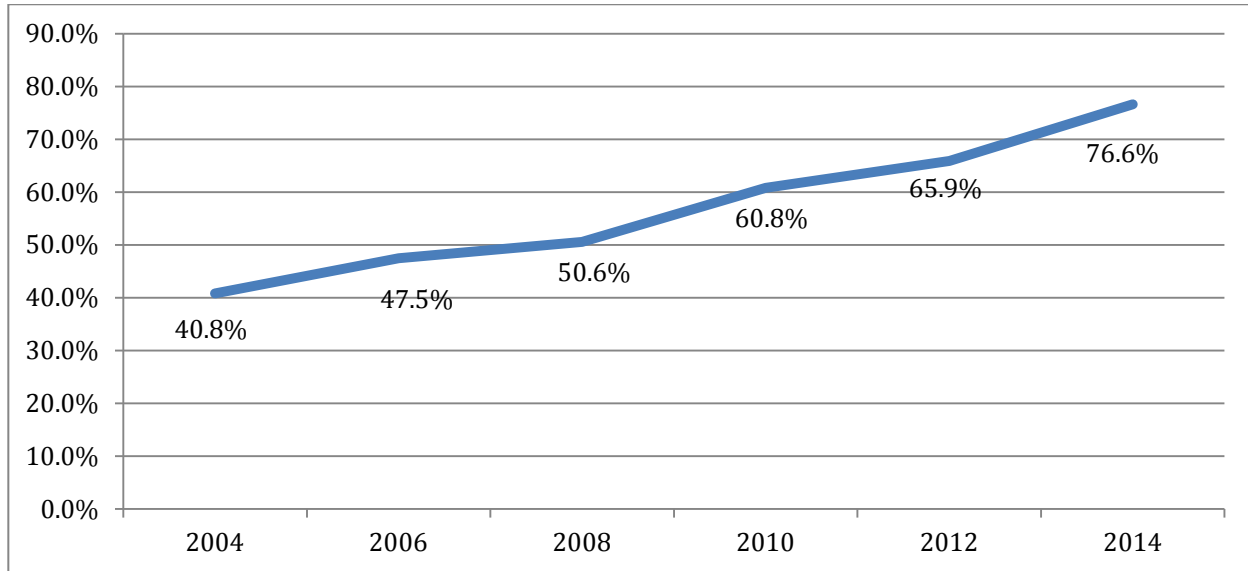
As Graph 2 shows, over the past decade early voting has become the dominant method of voter participation in Arizona. Based on initial data collected from the 2014 general election, more than three quarters of all votes cast were via early voting²³. This was by far the largest share of the vote in any 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.



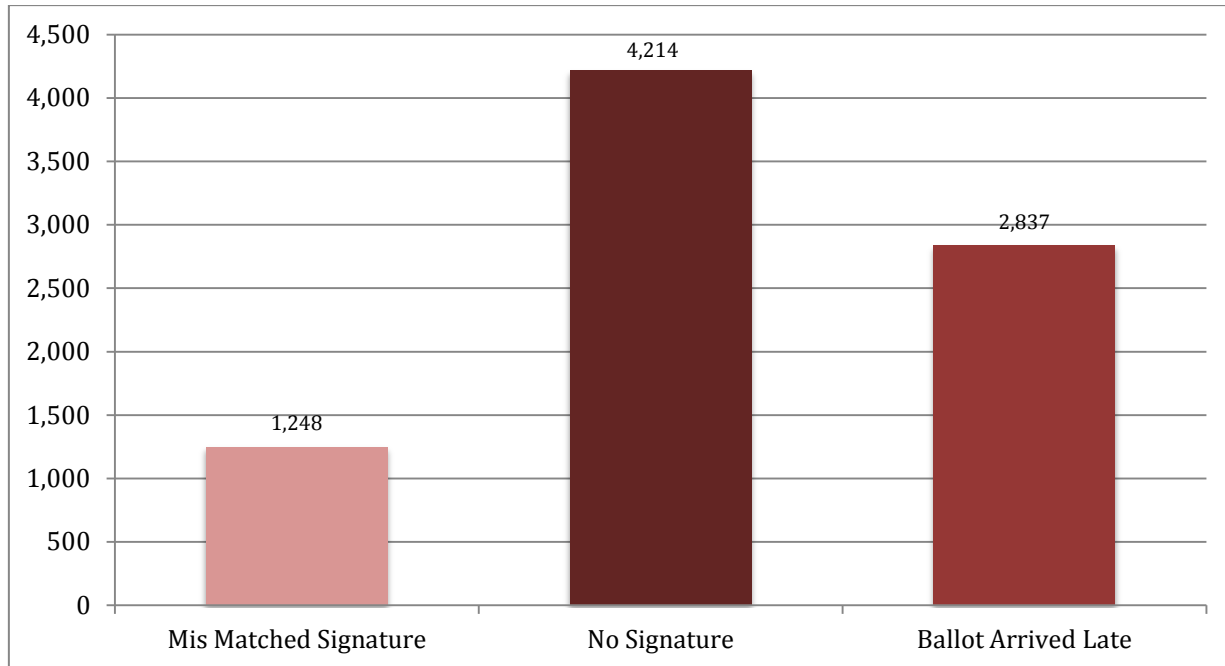
Many aspects of the early voting process are extremely beneficial for Arizona voters. Being on the permanent early voting list means getting the ballot in the mail without having to request it every election and includes city, state or federal elections. Additionally, early voters do not experience the 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 p.m. 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. This report’s researchers 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. To begin with, 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. Secondly, 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

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>

ballots from five counties: Maricopa, Pima, Cochise, Yavapai and Coconino. The two charts below 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

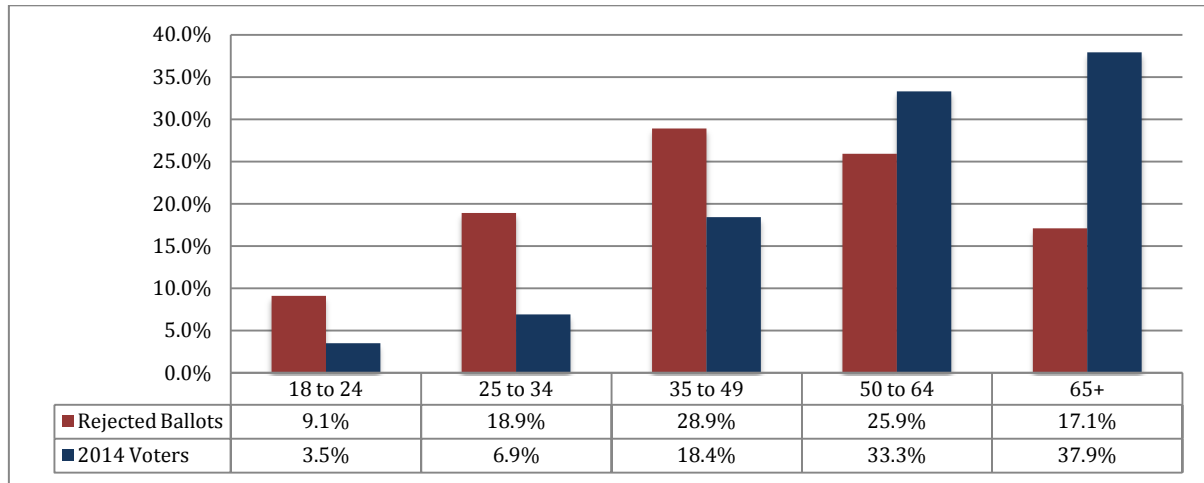
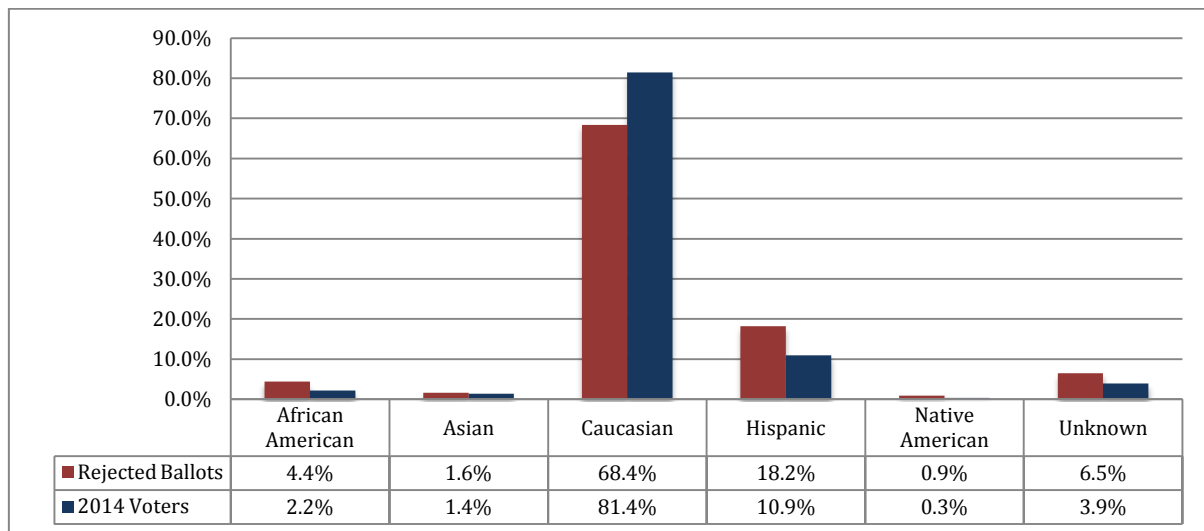


Chart 6: Demographic Make-up of Ballot Rejections
Racial distribution of rejected ballots in the 2014 general election



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. This report’s 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 Republican Kansas Secretary of State Kris Kobach, 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 Kansan 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. The media recently 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 Recorders 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 16-579 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 Day.⁴⁵ 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

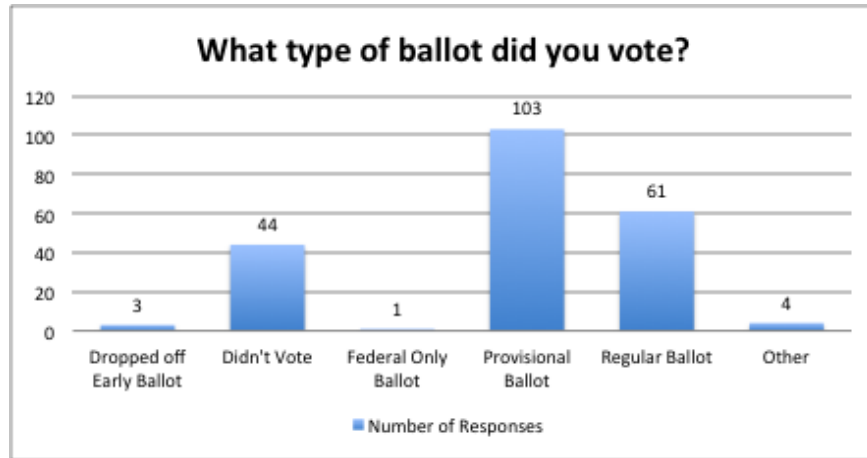
Amend ARS 16-409, which states that only towns and school boards can conduct all-mail ballot elections. In 2014, at least 75 percent of Arizona voters cast an early ballot in the general election. Given this high and growing level of mail-ballot use, counties should be able to designate all-mail ballot 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>

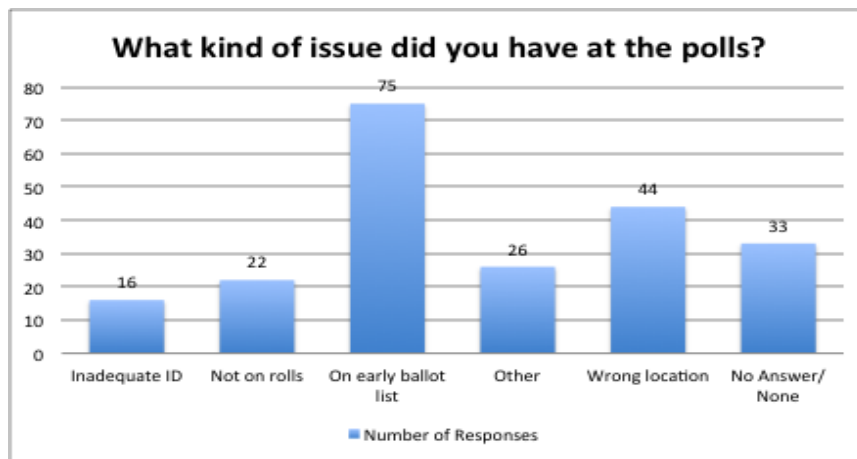
⁵⁰ Bland, G., & Burden, B.C. (Dec 2013). Electronic Registration Information Center (ERIC) stage. <http://www.rti.org/publications/abstract.cfm?pubid=21769>

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. Nearly half (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.