



Proposition 200 & the AZ Bifurcated Voter System

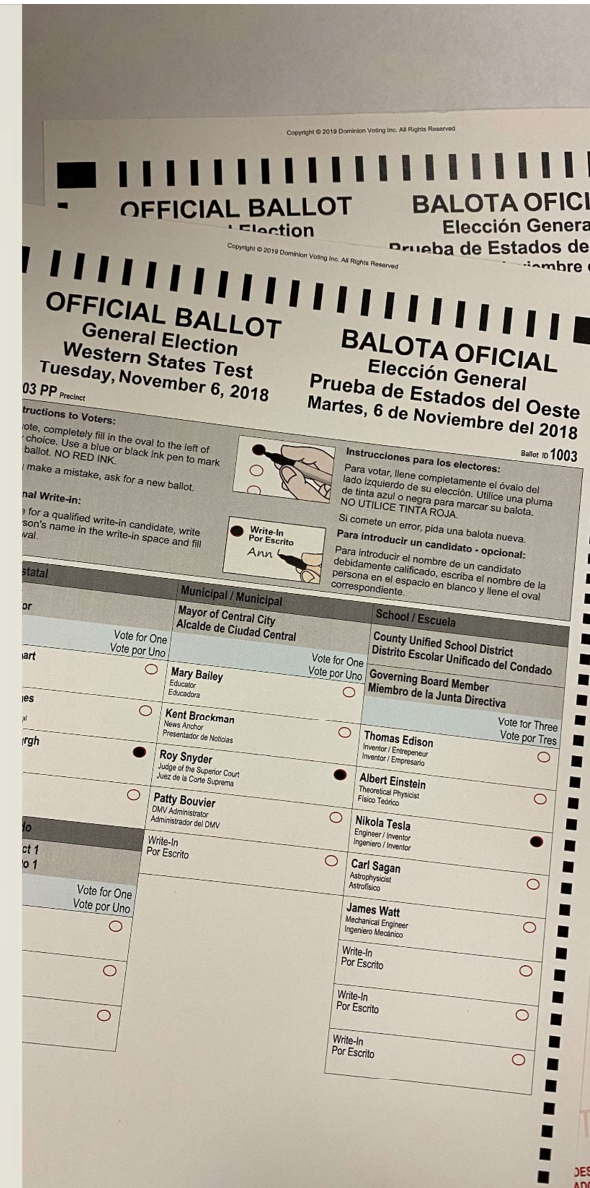
Office of Maricopa County Recorder Stephen Richer
Customer Relations Team





Agenda

1. Voter registration requirements and penalties
2. Constitutional, federal, and state laws that affected Proposition 200
3. Initial lawsuit
4. Appeals
5. Supreme Court decision
6. Final implementation in Arizona



Requirements to Register to Vote

Required Qualifications

In order to register to vote, you must be:

- A United States citizen
- 18 years old on or before the date of the next election
- *A resident of the state of Arizona*
- **Under federal law**, voters must swear that they are a citizen. They are not required to show physical proof when registering.

Disqualifications

These situations disqualify you from registering:

- Not a United States citizen
 - Persons who are permanent residents, have a green card, etc.
- *Convicted felons who **have not** had their civil rights restored*
- *Persons adjudicated incapacitated by the Courts*



The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

- It is **illegal** for a non-citizen to vote in federal and state elections. If a non-citizen breaks that law:
 - They can be fined up to \$100,000
 - They can face 1-3 years in prison
 - They can become inadmissible to the US **and** eligible for deportation
- For non-citizens applying for naturalization, merely being registered to vote can be a basis to deny citizenship.
- States can have additional penalties on top of federal penalties
 - (a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless—
 - 1) the election is held partly for some other purpose;
 - 2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and
 - 3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.
 - (b) Any person who violates this section shall be fined under this title, imprisoned not more than one year, or both.



Important Constitution & Amendment Sections

<p>US Constitution Article 1, Section 4 “Elections Clause”</p>	<p>“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”</p> <p>The “Elections Clause” gives state governments initial responsibility to regulate the mechanics of national elections, “but only so far as Congress declines to preempt state legislative choices.”</p>
<p>US Constitution Article 4, Section 2 “Supremacy Clause”</p>	<p>“This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”</p> <p>The “Supremacy Clause” establishes that the U.S. Constitution, and federal law generally, take precedence over state laws and state constitutions. It prohibits states from interfering with the federal government's exercise of its constitutional powers, and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.</p>



Important Constitution & Amendment Sections

<p>US Constitution 14th Amendment “Equal Protection Clause”</p>	<p>“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”</p> <p>Essentially, this section of the Amendment mandates that individuals in similar situations be treated equally by the law.</p> <p>The 14th Amendment has been the basis for numerous famous Supreme Court cases, including Brown v. Board of Education, Roe v. Wade, Bush v. Gore, Obergefell v. Hodges</p>
<p>US Constitution 24th Amendment</p>	<p>“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”</p> <p>This prohibits an individual from being charged a poll tax, or other type of tax, in order to vote.</p>



The Voting Rights Act of 1965

Section 5: Preclearance

- At the time of Proposition 200, **Arizona was subject to preclearance**
- States under preclearance were required to receive federal approval for any change to their election laws, including minor changes
- Any state that used tests for voter registration and had additional discriminatory election practices could be placed under preclearance by the U.S. Department of Justice
- States that have been under preclearance:
 - Alabama, Alaska, Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, South Carolina, Virginia, Wyoming
- Due to the Shelby County v. Holder decision by the Supreme Court (2013), preclearance is no longer in effect



National Voter Registration Act of 1993

- Requires states to offer simplified voter registration at MVDs and to people applying to public assistance
- USPS must mail election materials at a discount
- Requires states to have and accept federal voter registration forms
- Prohibits states from removing registered voters from rolls, unless certain criteria is met
- Most importantly: it set formal requirements for voter registration
 - Voters **swear** they are US citizens
 - Voters **do not** need to present physical proof of citizenship under federal law



Arizona Proposition 200: The Arizona Taxpayer and Citizen Protection Act

- In Arizona, citizens can create laws through the initiative process
- Proposition 200 was on the 2004 ballot and requires:
 1. Persons to provide proof of citizenship at the time of registration when registering to vote
 2. Voters to present a photo ID before receiving a ballot at a polling location
 3. State and local agencies to verify identity and eligibility, based on immigration status, of applicants for non-federally mandated public benefits
- The initiative passed with around 56% of the vote and was added to the Arizona State Statutes





The law was immediately challenged

- A lawsuit was filed in the US District Court for the District of Arizona (*Gonzalez v. Brewer*)
- After the proposition was passed in 2004, opponents of the law charged that the new law violated constitutional and federal law, leading to people being denied the right to vote
- However, despite being subject to preclearance, the US Attorney General gave Arizona clearance for the law in 2005.
- Because there was an election coming up in 2006, the opponents asked for a temporary injunction against the law until the constitutionality and implementation of the law could be resolved
- The injunction was initially denied, but opponents appealed to the Ninth Circuit Court of Appeals

Arguments Against Proposition 200

- Violation of the National Voter Registration Act of 1993
 - Specifically, Arizona had required more than federal law
- It is a poll tax under the 24th Amendment
- Unduly burdened naturalized citizens in violation of the 14th Amendment's Equal Protection Clause
- Disparately impacted Latino voters and diluted Latino voting power in violation of Section 2 of the Voting Rights Act of 1965



The 1st appeal and 1st SCOTUS intervention

- On October 5, 2006, 2 judges from the US Court of Appeals for the Ninth Circuit suspended the Proposition 200 requirements, a little over a month before the 2006 election
 - Although a suspension was granted, the court did not issue a ruling with a legal explanation
- The Arizona Secretary of State's Office asked the Arizona Attorney General's Office to immediately appeal the suspension
- The US Supreme Court intervened and lifted the injunction, saying that the Appeals court decision was in error (*Purcell v. Gonzalez*):
 - did not explain the basis for the suspension
 - a dramatic change in the law right before an election would disenfranchise voters



The Purcell Principle

- Proposition 200 and the Purcell v. Gonzalez case led to the creation of the Purcell Principle, which still affects decisions in election law to this day
- Courts should not change election rules in the period just prior to the election because it could confuse voters and elections officials
- It's been used often since 2006 in election cases involving:
 - voter ID laws
 - length of early voting periods
 - same day voter registration
 - Provisional ballot procedures
 - Absentee ballot procedures



2nd review by the Ninth Circuit Court of Appeals

- The US Supreme Court sent the lawsuit back to the Ninth Circuit Court of Appeals
 - They wanted the Court to provide a legal explanation for the injunction that they granted
- On review, the Ninth Circuit said that SCOTUS was correct, and an injunction shouldn't have been granted. Their legal explanation concluded that:
 - Proposition 200 did not violate the NVRA, Section 2 of the VRA
 - Did not discriminate against naturalized citizens or unduly burden voters under the 14th Amendment's Equal Protection Clause
 - Was not an unconstitutional poll tax under the 24th Amendment



The review decision led to the 2nd appeal of the Ninth Circuit Court

- In the second appeal, the Ninth District Court reversed some of their findings:
 - The requirement to provide proof of citizenship is preempted by the requirements of the National Voter Registration of 1993
 - However, the requirement to provide identification at the polls is valid
- At this point, the section of Proposition 200 that required proof of citizenship was no longer in effect



Then came the 3rd appeal

- The State of Arizona was unhappy with the new Ninth Circuit decision and asked the Arizona Attorney General to appeal
- The State of Arizona and the Arizona Attorney General requested an *en banc* review
 - This means a review by all 11 District Court Judges, instead of just the original 3 Judges that were assigned to the case
- The *en banc* review upheld the Ninth Circuit's most recent decision:
 - The requirement to provide proof of citizenship is preempted by the requirements of the National Voter Registration of 1993
 - Requirement to provide identification at the polls is valid
- The Supreme Court was asked to stay the decision since another appeal was in process, but the Court declined (*Arizona, et al. v. Abeytia, Bernie, et al*)



The last appeal went to the US Supreme Court

- *Arizona v. Inter Tribal Council of Arizona, Inc.* was heard in 2013
- The State of Arizona submitted a writ of certiorari to the Supreme Court in 2012 to review the Ninth Circuit Court's last decision:
 - A writ of certiorari is a request for a higher court to review the decision of a lower court
- On June 17, 2013, the Court affirmed 7-2 the Ninth District Circuit's ruling and confirmed that Arizona's proof of citizenship requirement is preempted by the National Voting Rights Act of 1993



Final Decision by the US Supreme Court

- The parties were asked to come to a joint final judgement on how to implement the decision, but the parties couldn't agree.
- Under the final judgement from the Court, Arizona was required to do the following:
 - Arizona must use and accept the Federal Voter Registration Form
 - Arizona cannot require applicants using the Federal form to provide more information than what is required on the form
 - This means that Arizona could not require proof of citizenship as outlined in Proposition 200
 - Arizona was prohibited from applying Proposition 200 to individuals applying to vote in federal elections for federal office
 - Arizona is required to make the Federal Voter Registration form "available through all reasonable channels"

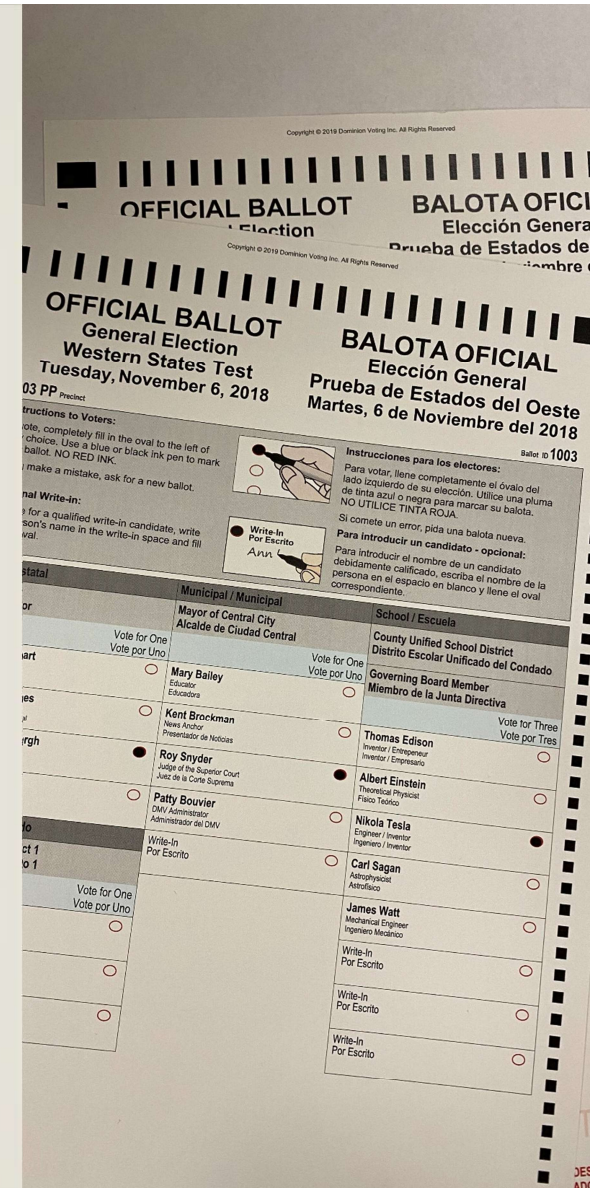


So what did that mean for Arizona?



Proposition 200 had to change to be law

- Because Prop. 200 was in violation of federal law, the law had to be adapted to be in compliance
 - Federal Supremacy Clause: The National Voter Registration of 1993 already sets requirements for citizenship for federal elections and Arizona **cannot** supersede those requirements
 - However, Arizona **can** require proof of citizenship for state elections
- This led to the creation of Arizona's bifurcated voter registration and ballot process
 - We have a full ballot and federal-only ballot
 - We are the only state with this system



Required Proof of Citizenship

- Under Arizona **Proposition 200**, proof of citizenship and identification is required to register to vote and receive a **“full ballot”**:
 - Arizona drivers license or non-operating identification
 - Birth Certificate, Certification of Report of Birth, Consular Report of Birth
 - U.S. Passport or Passport Card
 - Citizenship documents or Naturalization certificate
 - Tribal Identification Card or Documents
- If you do not provide proof of citizenship and identification when registering, you may be registered as a **“federal-only”** voter:
 - A “federal-only” voter is only able to vote for federal offices: U.S. President, U.S. Senator, and U.S. House of Representatives
 - They may not vote for state, county, or local races, or ballot initiatives

**For an exhaustive list of acceptable documents, visit [Register.Maricopa.Vote](https://www.maricopa.gov/register).*



[BeBallotReady.Vote](https://www.maricopa.gov/register) | [TengaBoletaLista.Voto](https://www.maricopa.gov/register)



Full Ballots vs. Federal-Only Ballots

Full Ballot	Federal-Only Ballot
<ul style="list-style-type: none">• A voter who has provided acceptable proof of citizenship and identification when registering• Ballot has all races, including:<ul style="list-style-type: none">• Federal• Statewide• Countywide• Local• Initiatives, Referendums, Propositions	<ul style="list-style-type: none">• A voter did not provide acceptable proof of citizenship or identification when registering, and• Our Office was unable to find citizenship information in our databases• Ballot has <u>only</u> federal races:<ul style="list-style-type: none">• President of the US• US House of Representatives• US Senate



Voter provides proof of citizenship at time of registration

Voter turns in a voter registration form with proof of citizenship, **OR** provides proof of citizenship after form is turned in



Our office reviews form and confirms all information, including citizenship status



Voter is registered to vote and will receive a full ballot



Voter does not provide proof of citizenship



How do we look for proof of citizenship?

- Previous registrations from the voter
- Databases including Arizona MVD, US Citizenship and Immigration Services, Systematic Alien Verification System, Social Security Administration
- Voter submits proof of citizenship



What happens after a voter is registered as federal-only?

5/26/2020

«VOTER_ID»
«First_Name» «Middle_Name» «Last_Name»
«Address»
«City» «State» «Zip»

Dear «First_Name»

When our office processed your voter registration, we were unable to determine **proof of citizenship or proof of identity**. You are currently a registered Federal-only voter in Arizona. This means that you are eligible to vote for any federal elections, such as President, U.S. Senate, and U.S. House of Representatives using an Arizona Federal-only ballot.

If you intend to vote a full ballot, you must provide our office with proof of citizenship by the Thursday prior to the election you will be voting in. Please be advised that providing documentary proof of U.S. citizenship to the County Recorder will update your voter registration status to a full ballot voter. A full ballot voter is eligible to participate in all federal, state, county and local races. If you do not provide proof of citizenship, you will remain registered as a Federal-only voter.

To prove citizenship, please provide **one** of the following forms of acceptable proof of citizenship:

- The **number** of your Arizona driver's license or non-operating identification number (must have been issued after 10/01/1996)
 - Place identification number here: _____; or
- A legible **photocopy** of your birth certificate, with your name clearly showing that verifies United States citizenship; or
- A legible **photocopy** of the pertinent pages of your United States passport; or
- A **photocopy** of your United States Certification of Naturalization; or
- The **number** of your Alien Registration Number (number begins with the letter "A" which is on your Certificate of Naturalization)
 - Place Alien Registration Number here: _____; or
- Bureau of Indian Affairs Card Number, Tribal Treaty Card Number or Tribal Enrollment Number
 - Place number here: _____

Place signature here: _____

Alternatively, you may provide our office with **proof of identity**; this will allow you to become eligible to request an early ballot. However, the ballot received will be Federal-only. For information regarding proving identity, see the reverse side of this letter.

Either mail, fax or email the required information to update your status. Please include a copy of this letter in your correspondence. If you do not respond to this letter, you will remain a Federal-only voter.

If you have any further questions, please contact our office at (602) 506-1511. You may also reach us by email at VoterReg@rsc.maricopa.gov.

Thank you in advance for your prompt attention to this matter.

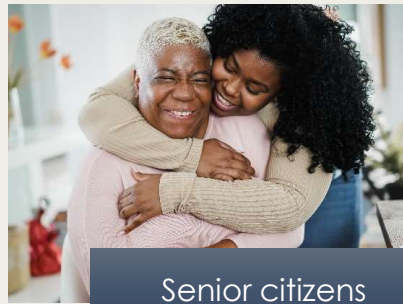
- After a voter is registered as a federal-only voter, our office continues to contact them
- Voter must be notified of their status and their options to become a full ballot voter within 10 days
 - *League of United Latin American Citizens of Arizona (LULAC) v. Reagan*
 - *Arizona Elections Procedures Manual, Section A: Citizenship Requirement*
- Many voters will submit proof of citizenship and fix their status
- However, some people choose to stay as a federal-only voter



Who are federal-only voters?



College students



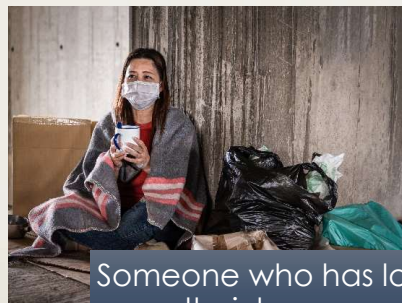
Senior citizens



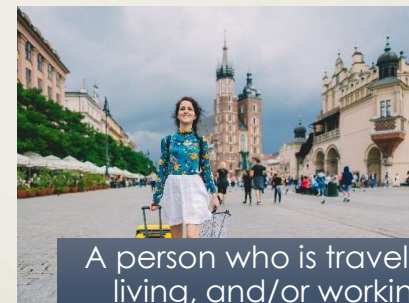
Military members, their spouses, and dependents



People in hospitals and long-term care facilities



Someone who has lost their home



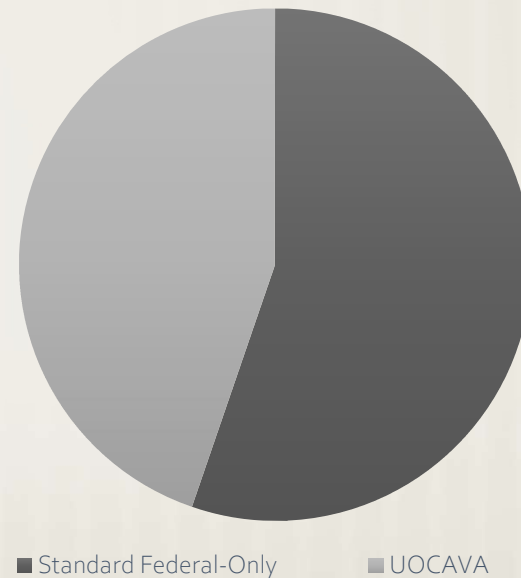
A person who is traveling, living, and/or working overseas



Federal-Only Voters in Maricopa

- In Maricopa County, there are currently **12,917** federal-only voters
- In the November 2020 election, **8,114** ballots were cast by federal-only voters
- Almost ½ of those ballots were UOCAVA ballots:
- While federal-only status is temporary for many people, some voters choose to be federal-only

November 2020 Election
Federal-Only Ballots





Thank You!



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