

★ SEPTEMBER 2010 POLICY PAPER ★



Uncounted Votes

How Arizona law impacts provisional ballots



The American Civil Liberties Union of Arizona is the state's premier guardian of liberty, working daily in the courts, Arizona Legislature and communities to defend and preserve individual rights and freedoms guaranteed to all by the Constitution and the laws of the United States and Arizona. The ACLU of Arizona is an affiliate of the ACLU, the largest civil liberties organization in the country, with more than 500,000 members.

The ACLU works to protect the rights of voters through targeted litigation to enforce provisions of the historic Voting Rights Act (VRA), which has guaranteed millions of minority voters a chance to have their voices heard and their votes counted. This special report is designed to inform voters about their right to cast provisional ballots and ensure that those ballots are counted.

Acknowledgements

Special thanks to legislative and legal interns Samantha Blons and Matt Cullimore for their critical work collecting and reviewing records and data for this project.

Policy Paper: **Uncounted Votes**
How Arizona Law Impacts Provisional Ballots
Published September 2010

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Executive Summary

For more than 13,000 Arizona residents, casting a ballot in the 2008 general election turned out to be a waste of time. These disfranchised voters used provisional ballots, an option guaranteed in the Help America Vote Act of 2002 and meant to help voters who arrive at the polls and are not on the list of registered voters.

In Arizona, as in a number of other states, the law requires that even a provisional ballot be cast in the right precinct. All voters leave the polls expecting their ballots to be counted. But for one in every 10 Arizona voters who cast a provisional ballot in the last election, they didn't.

The state requirement is in direct conflict with the intent of the law and it disfranchises those the law was created to protect. Therefore, the requirement should be rescinded. Until it is, however, it will be up to voters to prevent wrong polling place rejections. By remaining informed about precinct changes and the limits of provisional ballots, Arizonans can protect their right to vote and ensure their ballots are counted on Election Day.

The American Civil Liberties Union (ACLU) of Arizona compiled data on provisional balloting in the 2008 election from five¹ Arizona counties: Maricopa, Pima, Coconino, Pinal and Yavapai.

These five counties were chosen because Maricopa, Pima, Pinal and Yavapai are the four largest counties in Arizona, while Coconino is home to the major city of Flagstaff. The information revealed that a significant percentage of provisional ballots in those counties were rejected because voters cast their ballots in the wrong precincts.

This report will discuss the background of provisional voting, present detailed 2008 election results by county and conclude with suggestions for local election officials and Arizona voters.

¹Ballots cast in these five counties accounted for 87.9 percent of Arizona's votes in 2008.

Background

On November 4, 2008, the historic U.S. presidential election inspired more than 2.3 million Arizonans to cast their votes. However, not all ballots are created equal, and in the five counties included in this analysis, one of every 16 voters cast a provisional ballot. The Help America Vote Act of 2002 guarantees that a voter can cast a provisional ballot if he believes he is entitled to vote, even if his eligibility to vote is in question. As a general matter, provisional balloting should be seen as a progressive step. But Arizona law requires that a provisional ballot be cast in the voter's assigned precinct or else be rejected as invalid.² Because of this requirement, thousands of provisional ballots in the 2008 election were rejected. Voters who cast provisional ballots leave the polls expecting their votes to be counted alongside their fellow citizens. In Arizona, many of them are not.

More than 30 percent of provisional ballots cast in these five counties in 2008 were rejected for one of several reasons: (1) the voter did not have proper identification; (2) the voter was ineligible to vote; (3) the voter provided incomplete information; or (4) the voter was in the wrong polling place. The last reason – wrong polling place – is the focus of this analysis because it was the number one reason why provisional ballots were rejected. In fact, one of every ten provisional ballots cast in these five counties was rejected because the voter had gone to the wrong precinct.

Arizona's Votes at Risk

Several reasons may explain the high rate of provisional ballots cast in Arizona in 2008. In this rapidly changing and mobile state, population shifts may result in frequent precinct changes. Between 2006 and 2008, at least 43 percent of polling locations in Maricopa County changed. For this reason, Arizona's "correct precinct requirement" may have disproportionately affected the state's large elderly, minority, and young voter populations – groups who have been historically vulnerable to disfranchisement. For example, some Arizona seniors who had been casting their ballots at the same precinct for decades may have been assigned to a new polling location or precinct prior to the 2008 election. If they arrived at their former polling place on Election Day, these voters should have been directed to the new polling location. However, some were given a provisional ballot anyway. Provisional ballots cast at the wrong polling location were later invalidated and the votes never counted.

The ACLU also testified before the U.S. Commission on Civil Rights that poor people, and consequently, minority communities, are more likely to move than the non-Hispanic White population, and that the majority of moves among Blacks and Latinos are within their present county of residence. Thus, although such voters remain legally registered to vote within their counties of residence, they may have to vote in a new precinct. Voters who show up at their old precinct may encounter difficulties in determining their correct precinct, and poll workers may find it easier to simply give the person a provisional ballot without realizing that the elector will be disfranchised as a result.

²A.R.S. § 16-584(B).

The Numbers

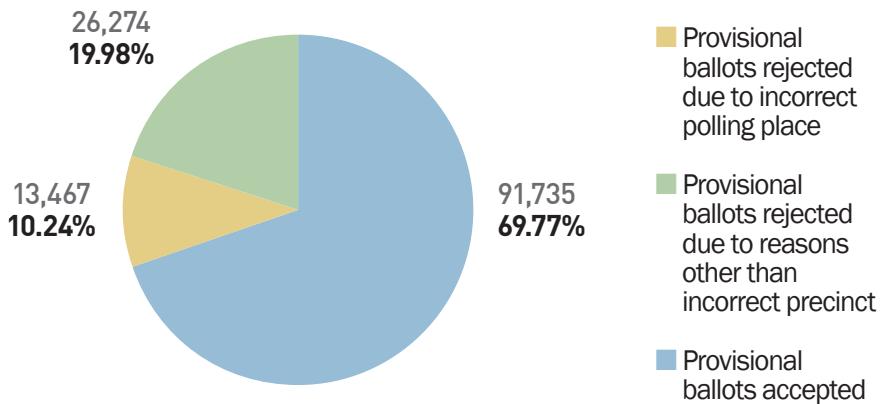
Data from five Arizona counties confirms that in this state, the correct precinct requirement disfranchised a significant number of voters during the 2008 General Election. According to records obtained by the ACLU of Arizona through records requests filed in 2009, there were 131,476 provisional ballots cast in 2008 in the five respective counties. Of those, 39,741 were spoiled. The number one reason that ballots were invalidated – with 13,467 spoiled ballots – was because they were cast in the wrong precinct. Of all the provisional ballots cast in these five counties, 10.24 percent of the ballots were rejected as illegal because they were cast in the incorrect precinct. That means more than 10 percent of those voters left the polling place thinking that they had voted, when in fact their ballots were never counted. Even more importantly, those disfranchised voters were duly registered and qualified to vote and had their ballots rejected only because of where the ballots were cast. Records show that 33.89 percent of all rejected provisional ballots were rejected because they were cast in the wrong polling place. That means fully a third of the invalidated provisional ballots in 2008 might have counted if voters had been directed to the correct polling place.

Cumulative Totals for Five Counties

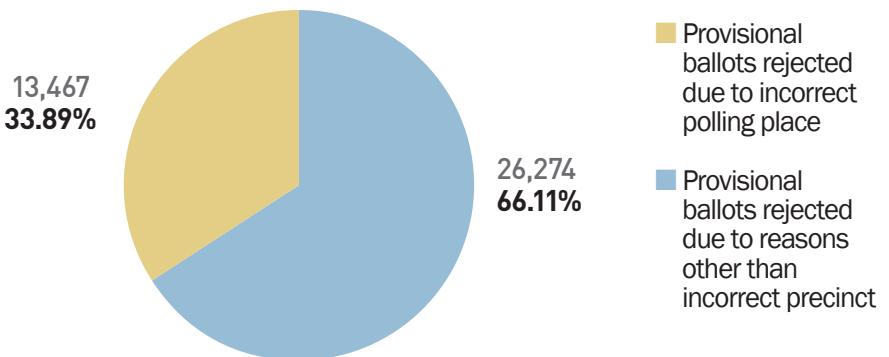
Total* provisional ballots cast	Total provisional ballots rejected	Total provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
131,476	39,741	13,467
6.45 % of total* ballots were cast provisionally	30.23 % of all provisional ballots cast were rejected	10.24 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		33.89 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

* Total cast in these five counties: Pima, Maricopa, Coconino, Pinal and Yavapai

Total* Provisional Ballots Cast in 2008



Total* Provisional Ballots Rejected in 2008



* Total cast in these five counties: Pima, Maricopa, Coconino, Pinal and Yavapai

Maricopa County

With more than 1.7 million registered voters, Maricopa is Arizona's most populous county and by far its largest voting block. According to U.S. Census Bureau information, 11.4 percent of the people are 65 years or older, while 31 percent are of Hispanic/Latino origin. Nearly two-thirds of Arizonans live in Maricopa County (4,023,132 out of 6,595,778).

In 2008, nearly 100,000 Maricopa County voters cast provisional ballots. That is more than three times the combined total of the other four counties surveyed here. The sheer volume of provisional ballots cast in Maricopa greatly influences Arizona's cumulative totals.

One of every 14 Maricopa County voters cast a provisional ballot in 2008. The county then rejected 29,531 provisional ballots, nearly a third of which might have counted had the voter been directed to the correct polling location.

Total provisional ballots cast in Maricopa	Provisional ballots rejected in Maricopa	Maricopa provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
99,826	29,531	9,159
7.23 % of ballots were cast provisionally	29.58 % of all provisional ballots cast were rejected	9.17 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		31.01 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

Pima County

Pima County is the second most populous county in Arizona. Census data shows that 15.6 percent of the population is older than 65 and that 33.1 percent is of Latino/Hispanic origin. In 2008, Pima County invalidated more than 18 percent of its total provisional ballots because they were cast at the wrong polling place. By this measure, that makes Pima the worst offender of the five counties analyzed here. If you voted with a provisional ballot in Pima County in 2008, there is a greater than one-in-six chance that your vote did not count because it was cast in the wrong polling place.

Total provisional ballots cast in Pima	Provisional ballots rejected in Pima	Pima provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
17,912	6,016	3,230
4.51 % of ballots were cast provisionally	33.59 % of all provisional ballots cast were rejected	18.03 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		53.69 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

Yavapai County

In Yavapai County, census data show that people aged 65 and older make up 23.2 percent of the population, as opposed to 13.3 percent statewide. Median household income in Yavapai is also about \$10,000 less than it is statewide.

In 2008, less than four percent of Yavapai County voters cast a provisional ballot. However, if a voter did cast a provisional ballot, there was a greater than one-in-ten chance that the ballot would be rejected for wrong polling place violations.

Total provisional ballots cast in Yavapai	Provisional ballots rejected in Yavapai	Yavapai provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
3,814	1,171	418
3.78 % of ballots were cast provisionally	30.70 % of all provisional ballots cast were rejected	10.96 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		35.70 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

Coconino County

Coconino County is the least populous county in this analysis, but it is the largest county by area and its population is steadily growing, something that could lead to polling place changes. Recent census data show that 8.2 percent of the population is 65 and older. Also, 29.4 percent of Coconino County's residents are American Indian, compared to only 4.9 percent statewide. The number of residents living below the poverty level is 16 percent versus 14.7 percent for the state. In 2008, Coconino County had the highest percentage – 9 percent – of provisional ballots cast. However, provisional ballots in Coconino were more likely to be counted than in the other four counties. Less than 6 percent of Coconino's provisional ballots were rejected for being cast in the wrong polling place.

Total provisional ballots cast in Coconino	Provisional ballots rejected in Coconino	Coconino provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
4,958	1,088	295
9.04 % of ballots were cast provisionally	21.94 % of all provisional ballots cast were rejected	5.95 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		27.11 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

Pinal County

In Pinal County, almost 30 percent of residents are of Hispanic/Latino origin and 13.1 percent are 65 or older. In 2008, Pinal County invalidated a higher percentage of its provisional ballots than any other county in this study – nearly 39 percent of its provisional ballots. However, “wrong polling place” violations were not the main reason for rejection. Still, about 19 percent of Pinal’s ballot rejections were due to ballots being cast at the wrong precincts.

Total provisional ballots cast in Pinal	Provisional ballots rejected in Pinal	Pinal provisional ballots rejected because the voter cast ballot in <i>wrong precinct</i>
4,966	1,935	365
4.68 % of ballots were cast provisionally	38.96 % of all provisional ballots cast were rejected	7.35 % of <i>all</i> provisional ballots were rejected because they were cast in the wrong polling place
		18.86 % of <i>rejected</i> provisional ballots were rejected because they were cast in the wrong polling place

Conclusion

The right to vote is the foundation of our democracy and is protected by the U.S. Constitution and numerous federal and state statutes. However, cumbersome Election Day procedures and extensive administrative problems have continued to disfranchise millions of eligible voters in recent elections, including many Arizonans. The guarantee of a provisional balloting option in the Help America Vote Act of 2002 was meant to help voters who come to the polling place and are not on the list of registered voters. But the Arizona law that invalidates thousands of ballots because they were cast at the wrong precinct goes against the intent of the provisional ballot. Equally significant, if not more so, these ballot rejections rob eligible voters of a political voice in statewide contests, such as the races for U.S. President, U.S. Senate or statewide ballot questions, where voting in the correct precinct is insignificant.

We believe that without proper training to instruct poll workers to direct people to their proper precincts, the provisional balloting process threatens to mislead voters into thinking that they are participating in American democracy by casting votes when in fact they are actually being disfranchised. Douglas W. Jones, associate professor at the University of Iowa, says that at their worst, provisional ballots “become a way to brush off troublesome voters by letting them think they have voted.”³

Local election officials need to ensure that all poll workers are able to explain to voters what it means to cast a provisional ballot, and what possible pitfalls may accompany doing so. Although poll workers in Arizona are trained to understand the state’s provisional balloting law, with so many ballots falling through the cracks, it is clear that more needs to be done to protect Arizona’s voters.

We are also calling upon state legislators to revamp the law that is helping to deny democracy to many voters. Arizona’s correct precinct requirement becomes very difficult to justify when figures show that as many as 6 to 18 percent of provisional ballots cast in various Arizona counties may be rejected because they were cast in the wrong precinct. Exacerbating this problem is the fact that many voters do not receive information about where to vote on Election Day in a timely manner, if at all. This is true in areas, particularly in low-income and minority communities, where people move frequently in the same county or where population shifts result in frequent precinct changes. When an eligible voter casts a provisional ballot, his or her choices in all the races and ballot questions in which he or she would have been qualified to vote – regardless of precinct – should be counted.

Until the correct precinct requirements are rescinded, it is up to Arizona voters to protect their vote. Arizona voter identification cards list a precinct number and name, but not the precinct address. Therefore, in the days leading up to the November 2nd General Election, it is important to watch for mail from your county or visit the county website to get a correct precinct address.

Furthermore, Arizona voters can utilize the state’s Secretary of State Voter View website at <https://voter.azsos.gov/VoterView/Home.do> to look up their registration information, polling place location and other important details. A list of county election websites is available at <http://www.azsos.gov/election/county.htm>.

³ Douglas W. Jones, “Reliability of US Voting Systems: An assessment in the light of recent changes,” University of Iowa Department of Computer Science, <http://www.cs.uiowa.edu/~jones/voting/cbc2004.shtml>

Tips for Avoiding Problems

- You can vote in the November 2nd election if you're registered to vote by Monday, October 4, at midnight.
- Check your voter registration status at least 30 days before the election.
- To request an early ballot to vote by mail, visit the Arizona Secretary of State Web site <http://www.azsos.gov/election/county.htm> and click on the appropriate "County Recorder" pages. The last day to request an early ballot for the General Election is 5 p.m. October 22.
- Another option is to vote before Election Day by visiting an early voting site in your county. Early voting begins on October 7. A list of early voting sites is available on the "County Recorder" page of the Arizona Secretary of State Web site at <http://www.azsos.gov/election/county.htm>.
- If you plan to vote at the polls, locate your polling place at least 30 days before the election.
- Vote early in the day to avoid the last-minute rush.
- Bring multiple forms of identification with your name and address, and remember that identification with your name, address and photograph is preferred.
- Read all instructions carefully.
- Ask for help if you need it.
- Take your time. You have up to five minutes to cast your ballot.

More Information

Arizona Secretary of State, Election Services Office: (602) 542-8683 or (877) THE-VOTE (877-843-8683)

U.S. Department of Justice, Voting Section, Civil Rights Division: (800) 253-3931

ACLU Voting Rights Project: (877) 523-2792

American Civil Liberties Union of Arizona (ACLU of Arizona): (602) 650-1854

Disclaimer

The information contained in this document is for general guidance only. It should not be used as a substitute for consultation with professional legal or other competent advisers.



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