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Shelby County v. Holder Impacting Voting Rights in Arizona

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Sweeping changes have followed the *Shelby County v. Holder* ruling by the United States Supreme Court and now the principles of state sovereignty and federalism are at stake.

This all came about after Shelby County, which provides that Arizona does not have to obtain “preclearance” from the United States Department of Justice before implementing election procedures.

Notably following the decision, Arizona passed House Bill 2305. Changes proposed in HB 2305 include county recorders purging voter names from the ballot if they are absentee voters who failed to vote in two consecutive elections and strict compliance to recall or initiative petitions. These changes — that have gathered more than 100,000 signatures by challenging organizations like the Protect Your Right to Vote Committee — will likely affect the November 2014 Arizona General Election.
Critics of the HB 2305 say it essentially strengthens the voter identification requirement in Arizona and allegedly causes voter suppression. The voter identification requirement is acclaimed as a measure to ensure integrity and prevent voter fraud.

According to Arizona Attorney General Tom Horne, in Arizona, residents who registered to vote using the federal form are restricted from voting in state and local elections. Arizona requires proof of citizenship, identity and residence through a driver’s license, birth certificate, or passport to vote in state and local elections. Gonzales v. Arizona, 624 F. 3d 1162, 1181 (9th Cir. 2010).

However, the federal registration form is in stark contrast to the state of Arizona registration form. The federal registration form, created as part of Motor Voter Law, only requires voters to certify under oath of perjury, proof of citizenship and eligibility to vote in an election. The Arizona voter identification requirement has cost the state a significant amount of money and time in lawsuits. The 9th U.S. Circuit Court of Appeals ruled in favor of Arizona holding that the Motor Voter Law did not prevent the state from requiring voter identification to cast a ballot in state and local elections.

The 9th Circuit held that Arizona may not, however, require identification or proof of citizenship to vote in federal elections. Arizona appealed this decision to the United States Supreme Court. The United Supreme Court did not reverse the 9th Circuit but stated that Arizona has a constitutional basis to challenge the Motor Voter Law since determining voter qualifications in federal elections is a state function. Arizona v. Inter Tribal Council of Ariz., Inc., 133 S. Ct. 2247 (2013).

To seek Constitutional redress, Arizona is suing the Election Assistance Commission to get the federal voter registration form amended to require proof of citizenship. The Election Assistance Commission has yet to rule on the federal voter registration form.

The Voting Rights Act of 1965 prohibits voter discrimination. Pursuant to the 15th Amendment, states with a history of discrimination primarily in the South, are subject to a “coverage formula” as enumerated in Section 4. These states, including Arizona, had to obtain federal approval “preclearance” to change voting procedure enumerated in Section 5. The Voting Rights Act prohibits past practices used by these voting jurisdictions such as polling taxes, voter harassment, voting test, burdensome residency requirements, or literacy requirements.
Voting rights advocates argue that without a coverage formula and preclearance, there may be an increase in voter discrimination, advising federal oversight as necessary to protect racial minorities, disabled persons, elderly, and economically disadvantaged communities from voter disenfranchisement.

According to Arizona Attorney General Tom Horne in a press release after Shelby County, “people can still bring law suits under Section 2 of Voting Rights Act for alleged voter discrimination.” As for preclearance, he considered it a “huge and expensive administrative burden.”

With the Shelby County ruling, Arizona finds itself in a quandary. Due to Arizona’s border location, there is a legitimate state interest in using the voter identification requirement as justification to prevent voter fraud. A review of voter fraud prosecution revealed merely 34 cases since the enactment of the voter identification requirement. Arizona should indeed protect the integrity of the electoral process but also emphasize other initiatives such as higher voter turnout. Without federal mandates, time will tell what impact the Protect Your Right to Vote Committee and HB 2305 critics have on voting rights in Arizona.

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