Arizona Government: THE NEXT 100 YEARS

The 97th Arizona Town Hall

November 7 - 10, 2010

Grand Canyon, Arizona

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We thank you for making the commitment to participate in the 97th Arizona Town Hall to be held at the Grand Canyon on November 7-10, 2010. You will be discussing and developing consensus with fellow Arizonans on the future of Arizona's government systems.

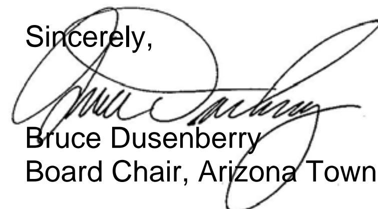
An essential element to the success of these consensus-driven discussions is this background report that is provided to all participants before the Town Hall convenes. As they have so often done for past Arizona Town Halls, the University of Arizona has prepared a detailed and informative report that will provide a unique and unparalleled resource for your Town Hall panel sessions.

Very special thanks goes to editor H. Brinton Milward who spearheaded this effort and served as a contributing author, and marshaled top talent to write individual chapters. For sharing their wealth of knowledge and professional talents, our thanks go to the many authors who contributed to the report. A special thanks also goes to Michael Proctor, Dean of The Outreach College, who made great efforts to ensure that the University of Arizona would be able to provide this resource.

The 97th Town Hall could not occur without the financial assistance of our generous sponsors, which include Collaborating Sponsors Schaller Anderson, Inc. and Salt River Project; Supporting Sponsors Cox Communications, Inc., Snell & Wilmer, Virginia G. Piper Charitable Trust and Wells Fargo; Civic Sponsors Horizon Moving, Mohave County, Osborn Maledon, P.A., Perkins Coie Brown & Bain, P.A., and Ryley, Carlock & Applewhite; Consensus Champions Cochise College and Fennemore Craig, P.C.; and Associate Sponsors Farmers Investment, RBC Capital Markets Corp., Sun Health Corp. and Town of Oro Valley.

When the 97th Town Hall ends, the University of Arizona's background report will be combined with the recommendations from the Town Hall into a final report. This final report will be available to the public on the Town Hall's website and will be widely distributed and promoted throughout Arizona. The Town Hall's report of recommendations and background report will guide the development of Arizona's future government structures.

Sincerely,



Bruce Dusenberry
Board Chair, Arizona Town Hall

Ninety-Seventh Arizona Town Hall
November 7-10, 2010

Arizona's Government: The Next 100 Years

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One of the most impressive things about putting together an Arizona Town Hall background report is the good will that the coordinator and editors are able to draw on. In addition to authors from the University of Arizona, there are a number from Arizona State University. We also have authors from a law firm, an association of governments, and the Arizona Supreme Court. What motivated each of these individuals was a desire to see the State of Arizona's governing institutions improve their performance in the decades ahead and maintain the progress that the state has experienced over most of the past 100 years. None of the authors are under the illusion that this will be easy given the difficult financial circumstances the people of Arizona and its government face but there is a belief that through effective institutions and far-sighted leadership the State can begin to grow and prosper once again.

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We wish to thank all chapter contributors (whose names are listed on the inside cover page), and the Research Committee of Arizona Town Hall, headed by Bruce Dusenberry. We were shameless in tapping the Research Committee's expertise and asked two members of the committee to write chapters. We want to thank several authors who had other commitments over the summer yet produced excellent chapters very quickly. The support and understanding of Tara Jackson, President of The Arizona Town Hall was much appreciated. She helped us to identify potential authors and was understanding and resourceful when we hit several unanticipated bumps in the road. Lastly, thanks go to our two editors, Amanda Jones and Ashley Harris. Both are students in the Masters in Public Administration program at the University of Arizona. They exhibited high competence and grace under pressure.

We wish to thank two University of Arizona colleges and their deans. We are very appreciative to the Outreach College and its dean, Mike Proctor, for the financial support the college provided for this report. Mike's good advice and counsel were invaluable. Our appreciation also goes to John Paul Jones, III, dean of the College of Social and Behavior Sciences for supporting the preparation of the report and understanding why several of my reports that were due over the summer came in to the college later than expected.

H. Brinton Milward, Town Hall Report Coordinator
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Tucson, Arizona
October 6, 2010

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List of Acronyms

AACo: Arizona Association of Counties
ACIA: Arizona Commission of Indian Affairs
ACIC: Ak-Chin Indian Community
AJC: Arizona Judicial Council
ARS: Arizona Revised Statutes
CSA: County Supervisors Association of Arizona
EORP: Elected Officials Retirement Program
IRS: Internal Revenue Service
ITCA: Intertribal Council of Arizona
LACT: League of Arizona Cities and Towns
NACo: National Association of Counties
NCJS: National Crime and Justice Survey
NCSC: National Center for State Courts
PAC: Political Committee
PAG: Pima Association of Governments
P.L. 280: Public Law No. 83-280
PSPRS: Public Safety Personnel Retirement System
SB: Senate Bill (Arizona State Senate)
SRPMIC: Salt River Pima-Maricopa Indian Community
TO: Tohono O’odham Nation

Why Institutions Matter for Good Governance

Edella Schlager
University of Arizona
School of Government and Public Policy

Key Points

- How institutions are actually organizations providing rules and guidelines
- Institutions allow the citizens to act as a collective in order to receive benefits, good and services they otherwise could not get alone
- How difficult it is to balance liberties and protection as an institution
- The influence of self-interest and human nature on the creation of our national institution and how it is still reflected in today's government
- Institutions are an important entity to protect our values
- Reform is very difficult and the unintended consequences that come along, or the baggage that reform can create whether it is intentional or unintentional
- If we treat institutions as experiments when it will increase our modesty and ability to provide services as well as allowing us to learn from the mistakes we have made

Introduction

Arizona's Clean Elections Law has received considerable attention recently. Opponents claim that its matching funds requirement infringes on the First Amendment's guarantee of free speech. Recently, they convinced a U.S. Supreme Court justice to enjoin the matching funds part of the law until the Supreme Court considers hearing the case.[i] Proponents claim that the law is necessary to lower the barriers for citizens to seek office, increasing voters' choices among candidates. Clean Elections candidates should be less beholden to special interests and lobbyists as they do not have to engage in a money chase, hence the title "Clean Elections."

Opponents and proponents of the Arizona Clean Elections law may differ on many issues related to the law, but they do share one thing in common: they understand that institutions matter for governance.

Institutions may be thought of as the rules and norms that permit, require, or forbid actions and behaviors. For instance, Clean Elections candidates are forbidden from raising and spending dollars over and above what they receive from the Clean Elections Commission. In turn, if a Clean Elections candidate faces a traditional challenger who spends more than the amount received by the Clean Elections candidate, the commission is to provide matching funds in order to level the playing field.

When referring to the U.S. Congress or Supreme Court, people often use the terms "institution" and "organization" interchangeably. However, Congress and the Supreme Court are more than institutions (i.e., rules and norms), they are organizations. Organizations consist of the people who hold positions in the organization, the rules and norms (i.e., institutions) that guide people's

actions, and the buildings, technologies, and capital that the organization has at its disposal. Returning to the Clean Elections example, the Clean Elections Commission is an organization, while the Clean Elections Law the commission administers is a complex set of rules and norms, i.e., an institution.

This chapter focuses on governing institutions and how they guide and constrain the behavior and actions of people and organizations so that socially desirable goals and values are realized. The rules and norms that create different branches of government, grant different powers to each branch, structure how citizens run for and hold office, and provide opportunities for citizens to directly participate in governance are just as important as the type and quality of people who hold public office.

Realizing good governance is not just a matter of voting "bums" out of office and replacing them with more civic-minded representatives. It is also necessary to design good government institutions that support and enable civic-minded representatives to engage in good governance and limit the damage bums can cause if they somehow manage to gain office.

This chapter explores why governing institutions are important and why they are difficult to reform.

Why Institutions Matter

At the most basic level, rules and norms allow people and organizations to achieve values and outcomes that they otherwise could not if they were to act alone.

Rules allow people to coordinate their actions and engage in collective action to achieve desired outcomes. For instance, a single household in a neighborhood of several hundred households would not be able to provide numerous amenities above and beyond what a city provides for its neighborhoods. In forming a neighborhood association, however, the residents of a neighborhood can work together to provide neighborhood benefits, whether it is landscaping, or block parties, or a neighborhood watch, or a collective voice to the city council.

Institutions—the rules that create and structure the neighborhood association—allow citizens to collectively realize goods and services they all benefit from. Plus institutions allow neighbors to develop close bonds and common values and come to a shared understanding of what it means to be a resident of the neighborhood and what is reasonable to expect of one's neighbors.

This understanding of institutions as a means of engaging in collective action to achieve shared values and outcomes is reflected in the preamble of the U.S. constitution:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

How can the people of the United States collectively realize the values of justice and liberty while at the same time provide for the common defense and promote the general welfare? The simple answer is through a constitution composed of rules that establish different governing bodies and positions and that grant those same entities different types of authority. But a closer

reading of the preamble suggests a more nuanced understanding of institutional arrangements because it suggests a challenge: is it possible to design a national government strong enough to defend the country and realize national interests such as promoting trade and commerce without trampling on the liberties and freedoms of its citizens and states? How the designers of the U.S. Constitution addressed this challenge reveals a sophisticated understanding of how and why institutions are important.

Through the federalist papers, the constitutional designers explained and justified why they made the institutional choices they did and why they were the best choices. In justifying their decisions, e.g. why a bicameral legislature, or why an independent judiciary, they reveal an understanding of how institutions matter and the challenges of institutional design, that remain true today.

Institutions Provide Incentives for Action

The challenge presented in the Constitution's preamble—a national government strong enough to pursue national interests but not so strong as to trample liberties and freedoms—implies a reason why institutions are important and one that we are quite familiar with today. Institutions provide incentives for individuals to act. If the institutions are designed well, people will face appropriate incentives to act in ways that promote desired outcomes, e.g., national interests, but limit or dampen undesirable actions, e.g., abuse of power.

Acknowledging that institutions provide incentives that motivate action also acknowledges a particular view of human nature. For the designers of the constitution and for us today, human nature is to act out of "self-love" or self-interest. As James Madison so famously stated in Federalist Paper 51[ii]:

> But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

Since people act out of their self-interest, governing institutions must be designed so that as people pursue their self-interest, they also pursue the common interest.

Tying self-interest to the common interest is sprinkled throughout the U.S. constitution and the design of the federal and state governments. Their most basic features are grounded in harnessing self-interest in pursuit of the common interest. Establishing powers in three independent branches of government and allowing officials in each branch to act as a check on the other so that no single branch becomes all powerful places the self-interest of the different officials in the service of the common interest.

In creating a limited government by dividing powers among three branches that act as checks on each other, decision-making processes are slowed, allowing reflection, debate, and contestation to occur. As a long time student of federalism has described it, "The political process is one that should enable human reason to be transformed from a consideration of momentary passion and

immediate interest into a more general and long-term consideration of “policy, utility, or justice.”[iii]

This concern with harnessing self-interest t**o** the common interest continues today as we devise and adopt institutional reforms. For instance, a common means of making sense of the choices and actions of elected officials is to assume that they act in their self-interest, with self-interest defined as seeking election or re-election. Tying the self-interest of the representative to the interests of her constituents by requiring her to win a plurality or majority of votes dampens her ambition, and the interests of her constituents are served.

However, many people express concerns over the ties between elected officials and constituents and reform efforts are undertaken to ensure the quality of those ties. Perhaps the self-interest of re-election motivates the representative to take advantage of her office’s perks to gain an incumbent advantage and to become a career politician. Wouldn’t citizens be better off, not by being represented by career politicians but by representatives who may hold office for only a limited number of terms? Or, in seeking re-election, representatives may pay too much attention to those who donate resources to their campaigns. Wouldn’t citizens be better off if representatives were free to listen and engage with all of their constituents, rather than constantly chase money from a few? In either instance, the effort is to relate the elected official’s interests with the interests of her constituents.

Institutions Promote Societal Interests and Values

Institutions do more than motivate action by providing incentives that appeal to self-interest. Institutions also promote and reflect societal interests and values. How are liberty and justice—the two values singled out in the Constitution’s preamble—realized through institutions? Partly by defining appropriate incentives that discourage public officials from abusing their public offices, but also by devising institutions allowing a wide variety of interests and values to be represented, recognized, and protected.

For the founding fathers, one of the greatest threats to individual liberty was faction, or what today we would call special interests. If a faction were to control a legislative body, it could then adopt laws that promoted its interests while stripping other citizens of their rights and liberties. Minority factions were not problematic because they could easily be quashed through regular elections. Much more problematic were majority factions that invariably sought to trample on the rights and liberties of citizens not part of the majority. The challenge then became how to protect democracy, which is based on majority rule, from majority tyranny.

The solution was not simple because faction and liberty are inextricably linked. As Madison argued in Federalist paper 10, “Liberty is to faction, as air is to fire.” He went on to note that a reasonable person would not advocate eliminating air to control fire, and neither should a reasonable person propose to eliminate liberty to control faction. How, then, to protect the liberty of all citizens in the face of faction?

The partial answer was to devise institutional arrangements that created a federal form of government consisting of many state governments and a national government that exercised independent but concurrent authority. In Federalist 10, Madison succinctly explained how federalism dissipates the ability of majority factions to engage in mischief:

> The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. … A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State. In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government.

Multiple limited governments would act to limit majority tyranny and prevent majorities from trampling on the rights of minorities. However, an even more direct institutional solution for realizing cherished values was adopted.

During the process of getting the colonies to adopt the U.S. Constitution, the designers also devised the Bill of Rights. These first 10 amendments to the Constitution recognize that certain rights that represented deeply held values required special attention and protection. Multiple limited governments were insufficient to protect these values. If the ultimate powers of governance resided in the people alone, then certain "inalienable" rights had to be reserved for the people alone, which could not be taken by or alienated by others, especially public officials.[iv]

Contemporary passions illustrate the importance of institutions as a means of realizing and protecting values from majority tyrannies.

In Arizona alone, several legal challenges to the exercise of majority powers are underway. One is the challenge, mentioned above, to the Clean Elections law, claiming that the citizens of Arizona, through the initiative process, overstepped their bounds and violated the First Amendment protection of free speech. Another is the challenges to SB 1070, claiming that a majority in the state Legislature and the governor have variously violated the powers reserved for the national government and/or the rights of citizens to be free of unlawful searches and seizures.

Whether the actions of a majority of Arizona voters, or the actions of a majority of legislators (and the governor) qualify as examples of majority tyranny remains to be determined. Institutional arrangements cannot guarantee that majority tyranny will not happen, but they can be used, as the designers of the Constitution understood, to establish means of correcting such errors. In this case, an independent judiciary will determine whether citizens and legislators have overstepped their constitutional authorities.

Institutions allow people to engage in collective action to realize shared benefits and common values. They do this by providing incentives for people to act, by guiding and constraining behavior, and by defining and protecting cherished values and interests. U.S. citizens have inherited rich traditions surrounding governing institutions and institutional design. We are constantly tinkering with the institutions that define governance. Consequently, it is important not only to reflect on institutions and why they are important, but also to consider the challenges of institutional design and reform, the topic of the next section.

Forming a More Perfect Union: The Challenges of Institutional Design

In the "Star Trek" television and movie series, Captain Kirk, the leader of the Starship Enterprise, would decide on a course of action and direct his crew to "make it so." Only if the

design of institutions were as simple—where citizens or public officials agree upon a value or an outcome that they wanted to achieve, and then call up the appropriate rule or rules to make it so.

Instead, institutional design—creating or revising rules that provide appropriate incentives to accomplish agreed upon values and goals—is fraught with challenges and pitfalls for a number of reasons. People only imperfectly understand the consequences of institutions. And they have a difficult time making tradeoffs among divergent and conflicting goals and values. Furthermore, institutional reform does not occur in a vacuum. Rather, institutional reform takes place in complex settings composed of a variety of existing institutional arrangements, political cultures and values, socioeconomic trends, and problems and crises. Consequently, institutional design is more art than science and one should expect surprises when tinkering with rules.

The challenges and pitfalls of engaging in institutional design are many, but two of the more common ones will be explored, using examples from institutional reforms directed at state governments over the past 50 years.

Institutions Come with Known Baggage

Institutions are imprecise instruments, realizing multiple values and goals at once, even though some of those goals and values are undesired. We cannot simply "dial up" a value and then "dial up" a rule change that will achieve the value. Rather, when we "dial up" a rule change, that rule change is very likely to come with known desirable values and outcomes and known undesirable and unwanted outcomes. In other words, institutions carry baggage, i.e., multiple bundles of values and goals, only some of which are of our choosing. Consequently, from the very start, in deciding among institutional reforms we must accept that we will achieve desired and undesired outcomes.

An example of imprecise institutions is the professionalization of state legislatures. Beginning in the middle of the 20th century, professional associations and legislators began a push to provide additional resources to legislators to help them better perform their duties. These resources, in the form of salaries (not just per diem payments), staff that provided independent sources of information on policy issues and budgeting, and more days in session were intended to provide legislators with the time and resources to carefully consider and devise strong and innovative laws.[v] Legislatures would be better able to conduct the people's business independently of the pressures emanating from interest groups, governors, and federal and state agencies.

Empirical studies generally support the claims of professionalism advocates. Compared to citizen legislatures, more professionalized legislatures tend to have greater contact with their constituents[vi] and adopt more innovative types of public policies,[vii] and interest groups have greater difficulty in establishing and maintaining an effective lobbying presence.[viii]

However, just as critics of professionalization argued, and advocates downplayed, professionalization gives rise to an outcome that is little valued, that is, professionalization comes with some anticipated baggage: the career politician. As professionalization increases, turnover rates among legislators decreases. While state legislator turnover rates in general have decreased over the past several decades,[ix] turnover rates of more highly professional legislatures are even lower than among citizen legislatures.[x]

Institutions Come With Unknown Baggage

Rules often create unintended and unanticipated consequences. Even an institutional change that appears to be simple—one that directly targets a single outcome—can produce unwanted surprises. In other words, institutions also come with unknown baggage.

An example of unintended consequences comes from the remedy for the “disease” of career politicians: term limits. As a scholar of the professionalism of legislatures explains:

> Professionalism in government has been the subject of frequent and heated debate in the United States over the last decade. The recent movement to limit the terms of legislators at both the national and state levels stems in part from perceptions that legislatures have become full-time assemblies inhabited by career politicians. The result, according to term-limit advocates, is that legislators spend too much time securing their positions in office or seeking advancement to higher levels of government and too little time attending to the public interest.[xi]

Limiting the terms of elected officials would be a direct means of sweeping career politicians out of office and instead replacing them with people who have greater experience and knowledge of the needs and concerns of average citizens. Elected officials would more likely be servants of the people rather than servants of their own careers.

Term limits have had their intended effect. In the states with term limit laws, turnover rates for legislators have significantly increased, whereas turnover rates in states without term limits have remained steady or have continued to decline.[xii] Career politicians have been swept aside. Some anticipated, if not intended, effects have also occurred. For instance the movement of elected officials from house to senate (also known as “churning”) has increased.[xiii]

The unknown and undesired baggage of term limits has been the surprisingly negative impact on professional legislatures. Term limits do more than remove career politicians; term limits change how professional legislatures conduct their business. Furthermore, term limits amplify partisanship among all term-limited legislatures, not just professional legislatures.[xiv] For professional legislatures, terms limits remove experienced leaders and legislators. In turn, such legislatures are less influential in bargaining over and developing budgets relative to governors, and they adopt less innovative policies.[xv] As Kousser summarizes, “For better or worse, legislatures that were redesigned by the professionalization movement have been revolutionized again by term limits.”[xvi]

In addition, in term-limited legislatures, majority parties tend to become less cooperative with minority parties, and members of minority parties are less likely to realize the passage of legislation they propose. Kousser speculates that this occurs because legislators are inexperienced and have shorter time horizons. Shorter time horizons means less time to develop personal ties across the aisle, and inexperience means greater difficulty in figuring out how to develop and pass major pieces of legislation. Consequently, the majority party devotes its limited time and experience to passing its own legislative agenda.[xvii]

Institutions are important tools for realizing collective aspirations and goals, but they are imperfect tools. We cannot know with certainty and precision the outcomes we will achieve when we change rules; consequently we are often surprised. However, we can anticipate the

challenges of institutional design and the need to continue to tinker and revise as we seek to form a more perfect union.

Conclusion: Treating Institutional Designs as Experiments

In the front window of a souvenir shop in Stockholm, Sweden hangs the sign, "Probably the best souvenir shop in Old Town." In this age of hyper-commercialization, the sign is striking for its modesty. The shopkeeper does not claim that his store is the best shop in all of Stockholm, or that it was voted the best shop in Old Town by readers of a magazine. The sign simply proclaims that it is probably the best shop in its neighborhood, one of dozens in Stockholm. Citizens and public officials should likewise demonstrate similar modesty and humility when it comes to their institutional designs.

One form of institutional modesty is to treat institutions and institutional reforms as experiments rather than as perfected and final designs. Viewing institutions as experiments means that we understand that we are likely to make mistakes as we attempt to design better governing arrangements. Consequently, it is important to learn from experiments. Admittedly, learning and attributing effects to specific institutional changes is a difficult undertaking, for all of the reasons mentioned above.

Institutional changes are clunky; they induce a variety of outcomes, some desirable and others not so much, and in attempting to keep the desirable outcomes and rid ourselves of those not so desirable we are prone to setting off a chain of unintended consequences. Furthermore, institutional reforms interact with the environment in which they are adopted; an environment that includes the political culture of a state, the mood of its electorate, the structure, opportunities, and performance of its economy, and so on, making it difficult to tease out the effects of the institutional change versus the effects of the environment.

Thus, we should always take claims about institutional design and performance with a grain of salt until a careful vetting of the proposed institutional change occurs. Will it accomplish its intended purpose? What are likely or foreseeable unintended consequences? How can the reforms be exploited by factions to pursue their own interests at the expense of others? And finally, what modifications can be made to address those undesired but anticipated effects?

Another form of institutional modesty is the process by which institutional design and reform takes place. Institutions allow people with diverse and conflicting interests to realize collective benefits and shared values. Institutions do that by supporting mutually productive relationships. Mutually productive relationships are more likely to emerge in settings that encourage due deliberation, and where participants are treated with respect and reciprocity.

As the designers of the U.S. Constitution understood, it is possible to design good government by reflection and choice, rather than by accident and force.[xviii] In creating institutions that support good governance, citizens and public officials should take a lesson from our founding fathers and from the owner of the Stockholm souvenir shop, and adopt as their slogan, "Probably the best institutional reform to achieve mutually productive relations, at least for the time being, given the alternatives."Admittedly, this is hardly a snappy motto, but it does reflect the importance of institutions and the challenges of institutional design.

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[i] Goldwater Institute. 2010. "McComish v. Bennett (Clean Elections)". Available at http://www.goldwaterinstitute.org

[ii] The full text of the Federalist Papers may be found at http://www.foundingfathers.info/federalistpapers/

[iii] Vincent Ostrom. 1987. *The Political Theory of a Compound Republic: Designing the American Experiment.* Second Edition. Lincoln, NE: University of Nebraska Press, p.43.

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[v] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press.

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[ix] Gary Moncrief, Richard Niemi, Lynda Powell. 2004. "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures" *Legislative Studies Quarterly* 29:357-381.

[x] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press.

[xi] James King. 2000. "Changes in Professionalism in U.S. State Legislatures" *Legislative Studies Quarterly* 25:327-343.

[xii] Gary Moncrief, Richard Niemi, Lynda Powell. 2004. "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures" *Legislative Studies Quarterly* 29:358.

[xiii] Gary Moncrief, Richard Niemi, Lynda Powell. 2004. “Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures” *Legislative Studies Quarterly* 29:377.

[xiv] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press.

[xv] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press, p.212.

[xvi] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press, p. 213.

[xvii] Thad Kousser. 2005. *Term Limits and the Dismantling of State Legislative Professionalism.*Cambridge: Cambridge University Press, p. 213.

[xviii] Federalist Paper 1.

The Arizona Constitution

Paul Bender
Arizona State University
Sandra Day O'Connor College of Law

Key Points

- Provides a description of what the Arizona Constitution does including; designating state boundaries, outlines the structure of government, and declares our individual rights
- The Constitution is the law of the land, it is what the courts follow when interpreting and sets up how each branch of government is to function
- Provides a brief description of the Constitution as a whole from The Preamble to Article 30
- Arizona's Constitution provides additional sets of rights on top of the ones outlined in the Bill of Rights
- Arizona's Constitution focuses on individuals and their ability to participate in the government process and depends on citizens for specific tasks, such as recalls
- Gives a description of the special features unique to the Arizona Constitution including; method of amending, recall and impeachment process, taxation rules, public education rules, rights of employees, the creation and implementation of the Corporation Commission, and many others
- Describes many of the questions and issues facing the future of Arizona and its Constitution

Introduction

Arizona's Constitution is Arizona's fundamental law. It was adopted in 1912 by the people of Arizona as a condition of Arizona's becoming a state, and only the people of Arizona can change it. It designates the state's boundaries, describes the structure of Arizona's government, and declares the rights that people in Arizona are to enjoy. The Arizona Constitution has been amended more than 130 times since Arizona became a state. It has, however, not undergone any fundamental changes and retains its original structure and general character.

The Arizona Constitution was to a large extent a product of the early 20th century progressive movement in American politics. That background is reflected in its extensive set of individual rights protections that are designed to limit abuses of governmental power, as well as in its provisions providing for voter initiative and referendum, for the recall of all elected officials, for the regulation of public utilities by an elected commission independent of the Legislature, for the establishment of a strong public-school system, and for the protection of the rights of workers and the right to sue for personal injury.

The Constitution as Law

The basic rule of constitutional law is that a government's constitution is superior to all of the government's other laws—neither the legislature nor the people of a state have the

power to adopt laws inconsistent with it. Change must come through constitutional amendment. Courts will not enforce laws that conflict with a state's constitution, and they will ordinarily require government officials to conform their behavior to the constitution's restrictions and requirements.

In Arizona, as in every other state in the United States, people live under two constitutions—the Constitution of the United States and the state's constitution. If there is no conflict between the two constitutions, they both apply. The Arizona Constitution, for example, permits voters to recall elected public officials. The U.S. Constitution, on the other hand, has no recall provision. But since nothing in the U.S. Constitution prohibits states from subjecting state officials to recall, Arizona voters may recall their governor, even though the president of the U.S. cannot be recalled. If the two constitutions conflict, however, the U.S. Constitution prevails. Arizona voters do not have the right to recall their United States senators because the U.S. Constitution specifies that senators are elected for six-year terms.

The application of two constitutions means that people in Arizona have the benefit of two sets of constitutional rights—those contained in the Arizona Constitution as well as those in the U.S. Constitution. State constitutions can recognize and enforce rights in addition to the rights that are protected by the U.S. Constitution, but state constitutions may not deprive people of rights protected by the U.S. Constitution. Article 18, § 6 of the Arizona Constitution, for example, provides that "[t]he right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation." The U.S. Constitution says nothing on this subject. As a result, Arizonans have the constitutional right to sue for personal injury, regardless of whether that right exists anywhere else in the United States.

On the other hand, the U.S. Supreme Court has held that the U.S. Constitution generally prohibits the introduction of a defendant's confession into evidence, unless the defendant received Miranda warnings prior to confessing. Defendants in Arizona state criminal prosecutions therefore have the right to Miranda warnings, regardless of whether that right is recognized in or protected by the Arizona Constitution. Indeed, unless the U.S. Supreme Court changes its mind about Miranda rights, Arizona defendants would continue to have this right, even if the Arizona Constitution were to be amended specifically to prohibit Arizona police from giving Miranda warnings.

State constitutions also are not permitted to conflict with valid federal statutes. The Arizona Constitution, for example, could not exempt Arizona from the application of a congressionally enacted speed limit on interstate highways.

The Structure and Content of the Arizona Constitution

Here is a brief article-by-article synopsis of what is in the Arizona Constitution.

The preamble to the Arizona Constitution does not contain a list of constitutional objectives similar to those set out in the preamble to the U.S. Constitution—e.g., the desire to "establish Justice," to "provide for the common defense," or to "promote the general welfare." Arizona's preamble merely states that "[w]e the people of the state of Arizona, grateful to almighty God for our liberties, do ordain this Constitution." The U.S. Constitution contains no similar reference to God or a supreme being, beyond providing that Congress enact "no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Article 1. State Boundaries. The first article of the Arizona Constitution establishes the state's boundaries. It authorizes the state Legislature, in cooperation with adjoining states, to alter those boundaries "upon approval of the Congress of the United States."

Article 2. Declaration of Rights. A Bill of Rights was not included in the original U.S. Constitution, but was added by amendments adopted four years after the Constitutional Convention. Protection of individual rights was, by contrast, a major concern of those who drafted and voted to adopt the Arizona Constitution. The Arizona Constitution's Declaration of Rights is contained in Article 2, its first substantive article. Article 2 states that "[a] frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government" (§ 1), and that "governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights." (§ 2)

Article 2 protects a wide variety of individual rights. Some of these are similar to rights contained in the U.S. Bill of Rights. For example, Article 2 prohibits the deprivation of "life, liberty, or property without due process of law" (§ 4), protects the rights to petition and to peaceably assemble (§ 5), guarantees the right "to freely speak, write, and publish on all subjects" (§ 6), guarantees the right not to have one's "home invaded, without authority of law" (§ 8), guarantees the right not to be "compelled in any criminal case to give evidence against [one's]self, or be twice put in jeopardy for the same offense" (Section 10), prohibits laws granting "privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations" (§ 13), prohibits laws imposing "cruel and unusual punishment" (§ 15), protects the right not to have private property taken for public use without just compensation (§17), protects the right to trial by jury (§ 23), prohibits bills of attainder, ex post facto laws, and "laws impairing the obligation of a contract" (§ 25), and protects the right to bear arms (§ 26).

Article 2, however, also contains rights that are not included in the U.S. Bill of Rights. The most prominent of these are an extensive Victims' Bill of Rights (§ 2.1), a guarantee of the right of a person not to "be disturbed in his private affairs" (§ 8), a "liberty of conscience" (§ 12), the right not to have "public money or property . . . appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment" (§ 12), and the prohibition upon the enactment of any law "limiting the amount of damages to be recovered for causing the death or injury of any person" (§ 31).

Insofar as Article 2 includes rights that are similar to rights protected by the federal Bill of Rights, there is a temptation to think that the framers of the Arizona Constitution were perhaps unnecessarily providing Arizona constitutional protection for individual rights already protected by the U.S. Constitution. That, however, was clearly not the case.

The Bill of Rights contained in the first 10 amendments to the U.S. Constitution originally applied only to restrict the actions of the new federal government—not to place limits on the actions of state or local governments. Nothing in the original Bill of Rights, for example, prevented states at that time from interfering with the freedom of speech, from prohibiting the free exercise of religion, from taking private property without just compensation, or from compelling self-incrimination or imposing cruel and unusual punishments. At the time the U.S. Constitution was adopted, protection against governmental abuses of that kind was provided, if at all, by state constitutions.

Amendments to the U.S. Constitution adopted after the Civil War subjected state and local governments, for the first time, to some significant individual rights guarantees. The 13th, 14th, and 15th Amendments abolished slavery, imposed due process and equal protection requirements on the states, and prohibited them from denying the right to vote on account of race. These amendments, however, did not contain any express U.S. constitutional protection for the rights of free speech, free assembly, or free exercise of religion. They also contained no protection against states taking private property without compensation, no guarantee of the right to trial by jury or the right not to be compelled to incriminate oneself, and no protection against unreasonable searches and seizures by police. During the latter part of the 20th century, the U.S. Supreme Court incorporated these rights into the 14th Amendment, making them applicable against state and local governmental action, but that process had not begun when Arizona's Constitution was adopted.

The framers of the Arizona Constitution, therefore, and the people of Arizona who voted to adopt it in 1912, saw its Declaration of Rights as the primary constitutional protection for individual rights in Arizona. Arizonans are entitled to the protection afforded by these state constitutional rights, as well as to the rights they have under the U.S. Constitution.

Additional individual rights protection in Arizona may be based on rights—like victims' rights and the right to recover for personal injury—that are not at all present in the U.S. Constitution. They may also result from a broader formulation of a right in the Arizona Constitution, as compared to the corresponding language in the U.S. Constitution.

Some Arizona rights, for example, are stated in a way that might make them applicable as limitations on private, as well as governmental action, whereas federal constitutional rights are rights applicable only against government action. Broader Arizona protection of individual rights may also result from decisions of the Arizona Supreme Court that give more generous interpretations to language in the Arizona Constitution than the U.S. Supreme Court has given to similar language in the U.S. Constitution. When interpreting

language in their state constitutions, state courts are not required to follow U.S. Supreme Court interpretations, even when the language in the two constitutions is identical.

Article 3. Distribution of Powers. Like the U.S. Constitution, the Arizona Constitution establishes a state government composed of three departments or branches—a legislative branch, an executive branch, and a judicial branch. Articles 4, 5, and 6 of the constitution, which are discussed below, establish the three departments.

Article 3 provides that these three departments of Arizona government "shall be separate and distinct, and no one of such departments shall exercise the powers belonging to either of the others." The U.S. Supreme Court has also recognized the separation of powers within the federal government, but has permitted a considerable degree of overlap, so that an issue may be one that two, or even three, of the branches of the federal government may have the right to address. Arizona's Constitution appears, by contrast, to call for a strict separation of governmental powers—to provide that each issue facing the government belongs either to the Legislature, the executive branch, or to the courts.

It is not entirely clear what the consequences are of this theoretically rigid separation, as compared to the more flexible federal design. One example of the difference may be illustrated by the treatment of rules governing court procedures. In the federal system, Congress has the right to prescribe those rules. The Arizona Supreme Court has held that in Arizona, on the other hand, the legislature has no power to enact procedural rules different from those that the judicial branch has adopted for itself.

Article 4. Legislative Department. Article 4 establishes the legislative branch of Arizona government. Unlike the corresponding article of the U.S. constitution, Article 4 does not contain a list of the things that the Arizona Legislature is empowered to do, such as to regulate commerce, enact criminal laws, protect property rights, etc. That is because the federal government is a government of delegated powers, which can only do what the U.S. Constitution authorizes it to do, while states have power to act on all subjects, unless they are prohibited from doing so by either the federal or the applicable state constitution. The Arizona Constitution imposes limitations on the Arizona Legislature, and also imposes some obligations on it, but it does not limit the authority of the state Legislature to any constitutionally prescribed list of subjects or purposes.

Article 4 is divided into two parts. Part 1, "Initiative and Referendum," deals with what is often called "direct democracy"—the power of the people to legislate without the cooperation of, and even against the wishes of, the elected legislature.

Part 2, "The Legislature," deals with the Legislature that is elected by the people. The placement in Article 4 of the people's legislative power before that of the elected Legislature appears to accord with the Arizona framers' belief that "[a]ll political power is inherent in the people" (Article 2, § 2).

Article 4, Part 1 provides that, in Arizona, "the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls independently of the Legislature." The people's constitutional power to propose and enact laws is exercised through the power of initiative. Pursuant to the initiative power, 10% of the number of people who voted for governor at the last prior general election may petition to place a proposal for new state legislation on the ballot. The proposal becomes law if approved by a majority of those voting on it. The governor has no power to veto an initiative approved by the voters in this way. A voter initiative may address any subject on which the Legislature itself can act; a voter initiative can also be used to repeal or amend something that the Legislature has already done.

The other legislative power that Article 4, Part 1 gives to Arizona voters is the power of referendum. Voters can use this power to decide whether to accept or reject bills that the Legislature has passed and that the governor has signed, and the Legislature can, if it chooses, refer legislation to the voters itself.

The number of signatures required to refer legislation to the voters is half the number that is required to put a voter initiative on the ballot—5% of the number of voters for governor at the last gubernatorial election. The referendum power was intended to be made especially effective in Arizona by Article 4's provision that legislative enactments do not generally go into effect immediately. Unless an enactment both addresses an emergency and is passed by a two-thirds majority in each house of the Legislature, it does not go into effect until 90 days after the end of the legislative session at which it was passed. That 90-day delay is provided in order to give voters the opportunity to call for a referendum. If sufficient referendum-petition signatures are gathered during that 90-day period, the law does not go into effect unless and until voters approve it in a general election.

Arizona courts have read Article 4 to exempt appropriations bills from the people's referendum power, and have also declined to review the question of whether an emergency actually exists when the Legislature declares that it does. As a result, the Legislature can effectively circumvent the people's referendum power if a bill passes by at least a two-thirds majority in both legislative houses and contains an "emergency clause."

Arizona's original constitution contained provisions that seemed to provide not only that the governor has no power to veto the results of initiative or referendum elections, but that the Legislature also has no power to repeal or modify measures enacted by the voters through either power.

The Arizona Supreme Court, however, interpreted this provision to apply only when a measure is passed by the affirmative vote of a majority of all of Arizona's registered voters—not merely by a majority of those voting on the measure. Since voter turnout is never close to 100%, that decision had the practical effect of giving the Legislature the power to repeal or change laws enacted by the voters through initiative and referendum.

By doing so on several occasions in the 1990s, however, the Legislature prompted voters to adopt a constitutional amendment that now provides that the Legislature may never repeal laws adopted by the voters, and may amend them only if the amendment is agreed to by three-fourths of the members of each house, and "furthers the purpose of" the voter-adopted law. Voter initiatives and legislation enacted through voter referendum can now be repealed only by voter initiative, or by a constitutional amendment.

Part 2 of Article 4 provides for a bicameral—i.e., two house—Legislature. The Arizona Senate is composed of 1 elected member from each of 30 legislative districts; the House of Representatives of 2 members elected from each district. An important question about state legislatures is how legislative districts are drawn. This has traditionally been done by the legislature itself. Recently, however, Arizona voters amended the Arizona Constitution to remove the power to draw legislative districts from the Legislature, and to vest it instead in an independent redistricting commission that is composed of citizens who are neither legislators nor government officials.

Since the U.S. Constitution requires state legislative districts to be of substantially equal population, states must redistrict their legislatures after each U.S. census. Arizona's new redistricting system has so far been in place only for the redistricting done after the 2000 census. That redistricting did not produce a significant number of more competitive legislative districts, as proponents of the new system had wished. Redistricting by a newly chosen commission will soon be done on the basis of the 2010 census.

Legislative salaries in Arizona are not currently set by the Legislature, as they were under the 1912 Constitution. A constitutional amendment adopted in 1970 created a commission on salaries for elected state officers. The commission is composed of five private citizens—two selected by the governor, and one each by the president of the Senate, the speaker of the House, and the chief justice. The commission recommends changes in legislative salaries; those recommendations are placed on the ballot at a general election, and do not go into effect unless approved by the voters.

Article 4, Part 2 also now includes term limits for state legislators—legislators may not serve more than four consecutive two-year terms in either legislative house. Legislators term-limited in one house, however, may immediately run for election in the other house, and may also run again for election to the same house after sitting out one two-year term.

The remainder of Article 4, Part 2 contains provisions similar to those applicable to Congress and to other state legislatures.

Article 5. Executive Department. Article 5 establishes an executive department headed by five independently elected senior executive officials—the governor, secretary of state, state treasurer, attorney general, and superintendent of public instruction. Each is elected to a four-year term and each is limited to two consecutive terms.

The governor is given the broad power to “transact all executive business,” and also the powers to convene the Legislature in extraordinary session, and to grant reprieves, commutations, and pardons. The powers and duties of the other four specified executive officers “shall be as prescribed by law” (Section 9). The order of succession to the governor’s office, should a governor not serve out a term, is the secretary of state, the attorney general, the treasurer, and the superintendent of public instruction.

The constitution’s provision for separate election of these five senior executive officials means that they are not part of a single unitary administration, as is true in the federal government, but may come from different political parties and/or have substantially different political agendas.

Separate election of Arizona’s senior executive officials also means that, should a governor leave office during the governor’s term, as has happened on several occasions, the new governor may come from a different party and have significantly different political objectives. The ballot at this year’s general election contained a proposed constitutional amendment that would address this latter problem by replacing the secretary of state with a lieutenant governor, who would stand for election with the governor, and succeed to the office of the governor should the governor’s term be cut short. The result of that election was not known at the time that this chapter was written.

Article 6. Judicial Department. Article 6 provides for one state Supreme Court, with broad statewide appellate jurisdiction, and a Superior Court to serve as the trial court of record in each county. The Supreme Court must be composed of at least five justices; the Legislature is authorized to increase that number, but has not done so. The constitution leaves to the Legislature the decision whether to establish intermediate appellate courts and/or courts inferior to the Superior Courts. The Legislature has created an intermediate appellate court of appeals with two divisions—one for the northern part of the state, the other for the southern counties and has provided for local justice courts.

The constitution adopted at the time of statehood provided that the state’s judges would, like its legislators, be elected by voters for terms of years. This system for electing state judges was fundamentally changed in 1974 by an amendment to the constitution that established a merit-selection process for the selection of all state appellate judges, and for the election of Superior Court judges in Maricopa and Pima Counties. The system employs merit-selection commissions that choose at least three nominees for each judicial vacancy, no more than two of whom can be from the same political party. One-third of the members of the merit-selection commissions are nominated by the State Bar; two-thirds are nominated by the governor. All commission members are subject to Senate confirmation. The governor is required to choose from among the commission’s recommendations. Merit-selection judges must stand for periodic retention elections, and need a majority of yes votes to remain in office.

Superior Court judges in counties other than Maricopa and Pima are still elected by voters for terms of years. The constitution requires that all judges retire when they reach

age 70. As is true under the U.S. Constitution, the state Supreme Court has the last word regarding the meaning of the Arizona Constitution. It's interpretations are dominant, unless overruled by the Supreme Court itself, or superseded by a constitutional amendment.

Articles 7–30. The remaining 24 articles of the constitution deal with a variety of other subjects. Article 7 governs elections, Article 8 provides for the recall of elected officials, and Article 9—the constitution's longest article by far—governs taxation. Articles 10–14 deal in turn with state and school lands, education, the counties, cities, and corporations. Article 15 establishes an elected corporation commission to regulate and set rates for public service corporations, such as public utilities, telegraph and telephone companies, and common carriers. Articles 16–19 deal, in turn, with the state militia, water rights, labor, and mines.

Article 20 is unusual. It contains 13 provisions on various subjects that Congress required to be included in Arizona's Constitution as a condition of statehood, and that are "irrevocable without the consent of the United States and the people of this State.

Among other things, these articles secure "perfect toleration of religious sentiment" for all Arizonans, prohibit polygamy and the introduction of intoxicating liquor into Indian country, require the establishment and maintenance of a public school system "which shall be open to all children of the state and be free from sectarian control," designate Phoenix as the state capital until at least 1926, after which the capital may be relocated by a vote of the people, and require all state officers and members of the Legislature to read, write and understand English.

Article 21 provides the procedure for amending the constitution. Its provisions are described immediately below. Article 22 is a grab bag of miscellaneous provisions; Articles 23 and 24 dealt with liquor prohibition and have been repealed. Article 25 prohibits denial of the opportunity to work because of non-membership in a labor union, Article 26 gives certain rights to real estate brokers, Article 27 authorizes the Legislature to regulate ambulances, and Article 29 provides that "the official language of the state of Arizona is English." Article 29 deals with public retirement systems, and Article 30 provides that "[o]nly a union of one man and one woman shall be valid or recognized as a marriage in this state."

Some Special Features of the Arizona Constitution

The contents of the Arizona Constitution's Declaration of Rights and of its articles establishing the three departments of Arizona government, are generally described above. Some of the provisions in those articles, as well as several provisions in the constitution's other articles, give the Arizona Constitution a somewhat distinctive character. This section addresses some of the most important of those distinctive features.

Mode of Amending. In accord with the objective of reserving a large measure of political power to the people, the framers of the Arizona Constitution made it extremely easy for voters to amend the Arizona Constitution. Article 22 of the constitution provides two ways for proposed amendments to be put before the voters without the need of a constitutional convention. An amendment can reach the ballot if it is proposed by a majority of each house of the Legislature, or if it is proposed by a petition signed by 15% of the number of people who voted for governor at the prior gubernatorial election.

A proposed amendment becomes part of the constitution if approved by a majority of the voters who vote on the proposal when it is put before them. The U.S. Constitution, by contrast, can be amended only if a proposed amendment is approved by two-thirds of each house of Congress and then ratified by the legislatures of (or conventions in) three-quarters of the states. The U.S. Constitution has been amended 27 times in more than 200 years; the much-easier-to-amend Arizona Constitution has been amended by Arizona voters more than 130 times in less than 100 years.

Both constitutions can also be amended through the convening of a constitutional convention, although that has never happened in either case. In Arizona, the people, rather than the Legislature, have control of the convention process as well. The Legislature can call for a convention only if a majority of the voters first approve of that idea, and amendments or revisions proposed by such a convention become effective only if approved by voters.

Recall and Impeachment. Part 2 of Article 8 of the Arizona Constitution provides for a legislative impeachment process applicable to all elected or appointed state officials. The process is similar to that contained in the U.S. Constitution. Part 1 of Article 8, however, gives Arizona voters, without the participation of the Legislature, the power to recall "[e]very public officer in the state of Arizona, holding an elective office, either by election or appointment" prior to the end of the term being served by the officer.

Recall, like amendment of the constitution, is accomplished through voter petition and voter ballot action. The process is initiated by a petition signed by a number of voters equal to 25% of the number of voters who voted for the elective office in question at the last election for that office. Elected officials can be recalled for any reason—there is no requirement to prove, or even allege, that the official has engaged in misconduct. If the required number of signatures is collected, and the official does not offer his or her resignation within five days, a recall election must be called.

A recall election does not consist of a simple yes or no vote on whether to retain the official in office, to be followed by an interim appointment or special election if the recall is successful. An Arizona recall election is instead essentially a new election for the remainder of the term of the recalled official. Unless the incumbent declines to be part of the election, the incumbent's name is placed on the ballot, along with other candidates who are nominated according to law. The candidate receiving the highest number of

votes—who may be the recalled official—serves the remainder of the recalled official's term.

The recall process may be invoked against officials who hold elective office at all levels of Arizona state and local government. A recall petition may be circulated against a member of the state Legislature as soon as five days after the legislator takes office; recall petitions against other state and local officials cannot be circulated until the officer has held office for at least six months.

Taxation. Article 9 contains detailed rules governing the taxation of property, as well as complex provisions placing various limits on state expenditures. Fiscal responsibility and limits on taxation are major themes of Article 9. It seems to require a balanced state budget by providing that "[t]he Legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the necessary and ordinary expenses of the State for each fiscal year" (§ 3). It contemplates that the state will incur debt, but provides that the aggregate amount of debt "shall never exceed the sum of three hundred and fifty thousand dollars" (§ 2).

Article 9 contains several important limits on the use of the state's taxing power. One of these is that "[n]o tax shall be laid or appropriation of public money made in aid of any church, or private sectarian school, or any public service corporation" (§ 12). Another is that "all taxes shall be uniform upon the same class of property" (§ 1).

Two recent constitutional amendments have imposed significant additional limits. Section 22 now provides that "[a]n act that provides for a net increase in state revenues" is effective only if it is passed by two-thirds in each house of the Legislature. Section 24 provides that governmental units within the state "shall not impose any new tax, fee, stamp requirement or other assessment, direct or indirect," on conveyances of real property. Another recent amendment limits the power of voters to increase the financial obligations placed on the state's general fund by providing that initiatives or referenda that propose "a mandatory expenditure of state revenues … must also provide for an increased source of revenues sufficient to cover the entire immediate and future costs of the proposal" (§ 23).

Public Education. The establishment and maintenance of a strong public educational system is a main objective of the Arizona Constitution. Article 11 obligates the Legislature to "enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system," which must include kindergarten schools, common schools, high schools, normal schools, industrial schools, universities (§ 1).

All state educational institutions "shall be open to students of both sexes, and the instruction furnished shall be as nearly free as possible" (§ 6). "[S]ectarian instruction" is prohibited (§ 7). Proceeds from the sale and rental of state lands must be used to support public education (§ 8) and, in addition, "the Legislature shall make such appropriations, to be met by taxation, as shall insure the proper maintenance of all State educational

institutions, and shall make such special appropriations as shall provide for their development and improvement" (§ 10). As noted previously, Article 11 prohibits the Legislature from laying any tax or appropriating any public money "in aid of any . . . private or sectarian school."

The Rights of Employees. Employee rights are another prominent feature of the Arizona Constitution. Article 18 limits child labor (§ 2), provides for an eight-hour day for all state and local government employees (§ 3), prohibits labor "black lists" (§ 9), requires the Legislature to enact an employer's liability law imposing liability on employers when workers in "hazardous occupations" are killed or injured due to the "conditions of such occupation" (§ 7), and requires the Legislature to enact a workmen's compensation system (§ 8).

The common-law right of workers to sue their employers for damages is protected by constitutional provisions that prohibit employers from requiring employees to waive the right to sue as a condition of employment (§ 3), that abolish the "fellow servant rule," under which employers had been absolved of liability for injuries caused to an employee by another employee (§ 4), that require that the defenses of contributory negligence and assumption of risk "shall, at all times, be left to the jury" (§ 5), and that guarantee that "[t]he right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation" (§ 6).

The Right to Recover for Personal Injury. The provisions of the Labor Article that have just been described have significance beyond the employer-employee context. In combination with section 31 of the constitution's Declaration of Rights, which provides that "[n]o law shall be enacted in this State limiting the amount of damages to be recovered for causing the death of injury of any person," these sections establish a general constitutional right to recover for injury caused by the negligence of others, or by defective or dangerous products or conditions. That right prevents Arizona's Legislature from eliminating or significantly diminishing common-law causes of action for personal injury, and from limiting the damages that can be recovered in such actions.

The Corporation Commission. The constitution provides for a popularly elected Corporation Commission charged with regulating the rates and services of public utilities. The commission's jurisdiction in these matters is exclusive of the Legislature.

Miscellaneous Provisions. The constitution contains a number of other provisions not generally found in the constitutions of other states. Article 12, for example, abolishes the common-law doctrine of riparian water rights, and recognizes "[a]ll existing rights to the use of any of the waters in the State for all useful or beneficial purposes." Article 19 establishes the constitutional office of a popularly elected mine inspector. Article 22, § 18 is a "resign-to-run" provision that prohibits elected officials from running for local, state or federal office unless they are in the last year of the term for which they were elected.

Article 18, § 22, provides that the death penalty is to be carried out through lethal injection. Article 23 makes English "[t]he official language of the state," and requires, although with a large number of exceptions, that "[o]fficial actions shall be conducted in English." And recently adopted Article 30 permits only "a union of one man and one woman" to be "recognized as marriage in this state."

Issues for the Future

Here is a sample of some issues that may merit consideration when thinking about the next 100 years of the Arizona Constitution:

Referenda, Initiatives, and Constitutional Amendments. Direct democracy has played a significant governmental role in Arizona's first 100 years. The process has not been without its problems. Petition and ballot-issue campaigns are expensive. Ballot propositions are often poorly drafted or so complex that they are difficult for voters to understand. Ballot-issue campaigns are frequently waged through campaign ads that do not accurately present the issues to voters. Constitutional amendments may be adopted by the affirmative vote of a very small percentage of qualified voters. The Legislature has very limited power to modify laws adopted through voter initiative or referendum. Do the Arizona Constitution's direct democracy features continue to make sense as an important part of Arizona government, and, if so, can the process be improved through constitutional change?

Election of Senior Executive Officials. Does it make sense for positions such as superintendent of public instruction, attorney general, state treasurer, and mine inspector to be filled by independently elected officials? Or would the state be better served by a more unitary executive branch, in which these posts would be filled by gubernatorial appointment, with legislative confirmation, of trained professionals in the various fields?

Term Limits. Have these been helpful in improving the quality of Arizona government? If retained, can their operation be improved?

Legislative Salaries. Legislative salaries in Arizona have remained extremely low, as compared to legislative salaries in many other states. Would the Legislature's ability to deal successfully with the issues that come before it be improved by a different salary structure?

Taxation and Finance. The constitution's provisions requiring a balanced budget and limiting state debt have not been as effective as the framers planned them to be. Are there useful changes that could be made in the relevant constitutional provisions? Have constitutional amendments limiting the Legislature's ability to raise revenue served the state's best interests?

Public Education. Arizona's public-school system is poorly financed as compared to systems in other states, despite the Arizona Constitution's framers' apparent belief that an

adequate public school system is essential to the state's welfare. Should that still be an important state objective and, if so, how can it best be achieved? Is there a way to better fulfill the framers' aspiration to have state universities that would be "as nearly free as possible"?

Regulation of Public Utilities. Does an independently elected Corporation Commission, free of legislative control, remain the best way to regulate utility rates and services?

Recall of Elected Public Officials. Does the ability of voters to recall elected officials continue to serve a useful function?

Competitive Legislative Districts. Are there further changes that could be made in the redistricting process to increase the percentage of competitive legislative districts and encourage greater public participation in elections?

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The Legislature and Arizona Government

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Key Points

- Provides brief overview of the Arizona legislative system, including explanation of Legislative districts, information on eligibility to run, etc.
- The Arizona Legislature is considered a part-time citizen legislature and therefore has specific term limits and a reduced pay scale.
- The Legislature operates under Arizona's clean election law, which was intended to provide public funding for some statewide candidates but it is controversial and often challenged.
- The state of Arizona has been embroiled in controversy regarding the drawing of election districts and has adopted a 5-person commission that oversees the mapping of legislative districts.
- There is a belief that political polarization has increased within the Arizona legislature.
- Because of polarization, some believe that certain legislators do not accurately represent a majority of Arizonans. In order to fight polarization, reforms should be made.

Introduction

The Arizona Legislature is the lawmaking and budget-making body of state government; one of three co-equal branches (legislative) along with the executive and judiciary. The 90 members of the Legislature are elected by the people of their district by a simple majority vote (except in the case of vacancies).

Individual constituents, special interest groups, state agencies, or the governor can suggest legislation proposing a state budget or changes to state law, but only legislators may actually introduce bills for consideration. All legislation must be passed by a majority vote of both chambers before it is sent to the governor. Some bills, such as those that increase state revenue and those that have an emergency clause, require a supermajority of the affirmative vote of at least two-thirds of the members of each chamber.

The Arizona Legislature has undergone a number of structural changes in the state's 98-year history, and additional changes are likely to be made in the future. As with any human institution, opinions change with time and circumstances and often lead to a process of reformation. Today, some of the frequently cited problems with the Legislature are being met with various proposals for reform. Some of those will be examined in this chapter.

Framework of the Arizona Legislature

The legislative branch of state government[i] in Arizona is made up of a bicameral legislature: the state Senate and the House of Representatives.[1] There are 30 legislative districts in the state, with each one represented in the Legislature by one state senator and two representatives. All members are elected for two-year terms, meaning the entire assembly is up for reelection at each even-year general election. Members run on a partisan ticket as nominees from their party; currently Republicans are the majority in both chambers with Democrats the minority party. Currently, there are no third-party or Independent members of the Legislature.

The Arizona Constitution gives the people of the state equal consideration for creating legislation by using the citizen initiative and referendum process.[ii] By collecting signatures of registered voters, proponents may place propositions on the ballot and, if a majority of the voters who vote at the election approve them, the people can enact changes to state law and amend the Constitution without the involvement of the legislative or executive branches.

Initiative measures now enjoy an additional measure of protection that conventional legislation does not. A 1998 initiative approved by voters amended the Constitution to say that the Legislature cannot change any voter-approved initiative measure except by a three-fourths supermajority, and then only to further the purpose of the original proposition.[iii]

In each year ending in "1", i.e., once every decade, an independent redistricting commission redraws the legislative district lines based on the most recent decadal census. Each district is intended to have approximately equal numbers of residents. Districts are drawn based on total population, not number of registered voters. Districts are to be contiguous and include "communities of interest" to avoid gerrymandering. Politically competitive districts are recommended but are not required. Currently, each legislative district in Arizona contains approximately 171,000 people.

A person running for the Legislature must be a citizen of the United States, at least 25 years old, never have been convicted of a felony, proficient in the English language, a resident of the state for at least 3 years, a resident of the county in which he or she intends to run for at least 1 year, and a resident of the legislative district in which they are running at the time of filing for the office. In order to appear on the ballot, candidates must file nominating petitions containing the signatures of 1-3% of the total voter registration of the party members in the district in which the candidate is running.[iv]

The Legislature convenes at the Capitol on the second Monday of January for its annual session. In addition, the governor may call the Legislature into special session at any time, but must identify the subjects to be addressed. Only those issues identified in the

[1] The State of Nebraska is the only one that has a unicameral, or single-chamber, legislature as the result of a constitutional initiative measure passed in 1934.

call may be legally enacted. By legislative rule, regular sessions are supposed to conclude by the Saturday in which the 100th day of the session falls. But that rule is frequently ignored without penalty.

All bills that are enacted must be read three times in each chamber unless approved by a two-thirds supermajority. Bills are assigned by the presiding officer to one or more committees in each chamber where they are discussed and debated, and where members of the public have an opportunity to provide testimony in support or opposition. In recent years, the Legislature has installed an electronic system in which individuals or groups can enter their support or opposition to various bills remotely from their home or office computers.

By legislative rule, all bills enacted must be approved by each chamber's rules committee, which verifies their form and constitutionality. All bills must also be presented to the party caucus meetings for discussion.

All members in the Committee of the Whole debate committee-approved bills on the floor of their originating chamber in order to finalize language. Bills are then scheduled for a final vote before moving to the other chamber.

A quorum of members, defined as a simple majority, must be present on the floor in order to conduct business. A simple majority of 16 in the Senate or 31 in the House is required to pass most bills, except for those that require a supermajority. Only the elected members have the ability to cast a vote in their respective chambers; there is no proxy or absentee voting permitted.

A controversial feature of the legislative process is the issue of "strike everything" amendments. Under this procedure, all the contents of a particular bill are removed and an entirely new legislative concept is put in its place. This occurs more frequently toward the end of a session as bills become stalled in committee. A bill sponsor will find another bill that is still alive in the political process and use it to resurrect the concept that may have died in the previous bill. This process often angers advocates of open, transparent government processes because the "strike everything" amendment can be adopted without full debate through the committee process, effectively short-circuiting the full legislative process.

Both chambers must approve identical bills before they can be transmitted to the governor. If different versions of the bill emerge from the two houses of the Legislature, the bill may go to a conference committee to work out compromise language, which then must be approved by both chambers. The governor may sign a bill into law, veto it, or allow it to go into law without his or her signature.

In a typical year, between 1,000 and 1,400 bills, memorials, and resolutions are introduced, and about 25% are passed.

Bills generally go into effect 90 days after adjournment of the session in order to permit the citizens to file a referendum petition. However, bills with an emergency clause go into effect immediately. A two-thirds vote of each chamber is required to approve a bill with an emergency clause.

Legislative Organization

Each Legislature covers a two-year period, with the first session following a general election identified as the "First Regular Session" and the one convening the following year as the "Second Regular Session." As noted earlier, the governor may call special sessions at any time, sometimes occurring concurrently with a regular session. Members of the Legislature, by a petition containing at least two-thirds of the members of both chambers, may compel the governor to call a special session.

Each chamber of the Legislature elects its own leaders and adopts its own set of rules for legislative procedure. Each chamber typically elects a leader (president in the Senate, speaker in the House) and an assistant or pro tempore leader. Leaders are responsible for appointing chairs of committees and hiring professional and support staff. The political parties organize themselves into party caucuses and elect their own majority or minority leaders, assistant leaders, and/or whips. Leadership in each chamber appoints committee chairs and vice chairs. The Legislature itself is responsible for disciplining its own members and may, by a two-thirds vote, expel a member.

In each chamber, the presiding officer exercises significant control over which bills ever have a chance of passage through a variety of procedural mechanisms. The speaker and president have the exclusive authority to assign bills to committees; they may send a bill to one committee, multiple committees, or no committee at all. And, once assigned, various committee chairmen have control over their own agendas and whether to hear a bill or not in their committees. After a bill is passed out of committee, the speaker or president may simply choose to hold it and not allow it to be heard on the floor. There is no procedural step to force the presiding officer to schedule a bill for floor debate.

Caucus meetings are held weekly during the majority of the session—more frequently as the session winds down—and are typically led by the majority or minority whip. These meetings give members an opportunity to share their comments about bills and ask questions of the sponsors, perhaps leading to the discussion of possible floor amendments. Caucus meetings are not formal debates, but give leadership a general idea of the chances of success for various bills. In most cases, party caucus meetings are open to the public.

Bills introduced by members of the minority party frequently have a slim chance of being heard in committee, much less passed into law. Standing committees, whose members are appointed by the presiding officer, always have a majority of members from the majority party and on most issues, they vote together as a bloc. Members who deviate from the party position too frequently may be removed from a committee, thereby losing influence in the political process.

Citizen Legislature and Term Limits

Service in the Arizona Legislature is envisioned to be a part-time endeavor, meaning it is a legislative body made up of a cross-section of average citizens rather than those who consider "lawmaker" their primary occupation. Many legislators are employed in the private sector or operate their own businesses or partnerships, enabling them to devote several months each year to their legislative duties.

The legislative pay schedule is developed by an independent commission and placed on the general election ballot for voter approval.[v] Fifteen of the last 17 proposals to increase legislative pay have been defeated by the voters, and legislative pay today is set at the 1998 level of $24,000 per year plus per diem of $35 per day for the first 120 days, and $10 a day thereafter. Legislators from outside Maricopa County receive $60 for the first 120 days and $20 thereafter. Legislators are enrolled in the Elected Officials Retirement Program (EORP), a state retirement system administered by the Public Safety Personnel Retirement System (PSPRS).

In 1992, Arizona voters approved an initiative proposition that imposed limits on all legislative terms. It limits senators and representatives to no more than four consecutive terms (eight years total) in each chamber. Legislators frequently move from one chamber to the other when they have reached their term limit. There is a "sit out" provision that allows someone to re-start his or her term-limit clock after being out of office for one full term.

The term limits movement in the early 1990s grew out of a frustration with long-entrenched members of the federal government and the perception of an abuse of power. Since federal-level term limits can only be approved by Congress, activists turned to states and cities to enact them. Some kind of a term limits scheme has appeared on the ballot in 23 states that have the initiative process. Today, 15 states still have term limits for members of their state legislatures. Other states have either repealed their term-limits laws or courts have ruled them unconstitutional.

Advocates of term limits say they preserve the citizen nature of the Legislature and avoid the corrupting influence of career politicians. Opponents generally argue that legislative service is a learned skill like any other profession, and that having a continual procession of freshman legislators leads to an increase in influence by legislative staff and lobbyists. They also cite the inexperience of legislators as a reason for why fewer big-picture reform proposals succeed at the state level.

Since major legislation often has to be proposed several times before compromise language is eventually developed that enables it to pass, legislators with a short time horizon are less likely to tackle it. Instead, some argue that they pursue short term, headline-grabbing legislation in order to make an impression on their constituents and secure reelection.

Increasingly, the state Legislature is the first elective office for candidates rather than having first served on local school boards, special districts boards, or city councils. As a result, local governments are required to educate incoming legislators about the close interrelationships between the various levels of government in the state, and how they are essential to one another's success.

For example, cities and towns often have to inform legislators about the shared revenue system enacted by voters decades ago that distributes a portion of state-collected revenues to local governments. Under immense pressure to balance the state budget, members often think of these funds as available for their own use, disregarding the historical commitment made to cities and towns, and the potential adverse impact on residents in their own districts.

Critics of term limits point out that institutional memory is lost when legislators are forced to end their service at a given time, and new members, who may not be aware of bills that were debated in previous sessions, are brought into the process. Opponents add that there are no term limits for lobbyists or legislative staff, and assert that since knowledge is power, the balance of power has shifted to those non-elected groups who have no obligation to serve the broader good of society, but only their clients or their institutions.

It is difficult to compare the influence of lobbyists and staff today to earlier times when legislative rules and processes were different. However, there is no mistaking the fact that both those groups do exercise a substantial amount of influence in the development of legislation today. It may or may not be different from past eras.

One feature of the Legislature that is different from past eras is the level of complexity of the issues, often leading to more lengthy sessions. In recent years, legislative sessions have tended to go far beyond the 100-day mark, often ending just before the beginning of the new fiscal year on July 1. The 2009 Legislature broke all records by having a series of special sessions that lasted into September before passing final budget bills.

Since the regular sessions can take approximately half of the calendar year, in addition to time for special sessions, interim committees, and constituent meetings, being a legislator in Arizona is virtually a full-time job, even though it is not defined or paid as such. As a result, many potential candidates are reluctant or unable to leave their professional careers or businesses to assume this "part-time" position at a very low salary.

Some believe this situation has created an environment in which the only people who seek legislative offices are either financially independent or committed ideologues who would pursue elective office in order to advance their political ideas, regardless of the pay level or time commitment.

Campaign Finance and Clean Elections

In 1998, voters approved the Citizens Clean Elections Act, a mechanism providing for public financing of legislative and other statewide candidates.[vi] The Citizens Clean Elections Act establishes a specific amount of funds for each qualifying candidate's campaign expenditures by restricting private campaign contributions to a specific number of individual $5 donations and holding candidates to spending limits in each election cycle. Additional spending is prohibited and may result in a violator being removed from office.

The intent of the Citizens Clean Elections Act was to neutralize the influence of special interest groups and wealthy individuals on elections and to place candidates on a more equal footing when competing for votes. In part, this system emerged from the highly publicized "AzScam" scandal of 1991, when 10 legislative members resigned or were removed from office after they were caught on hidden cameras taking cash payoffs.

The mission of the Clean Elections Commission is "to improve the integrity of Arizona state government and promote public confidence in the Arizona political process." Funding comes primarily from a combination of assessments on court-imposed civil and criminal fines and voluntary donations. In the 2008 elections cycle, 65% of eligible candidates ran their campaigns under this system.

Has Clean Elections succeeded in its mission? There are conflicting opinions.

On the one hand, some say that the influence of money and special interests will never be removed from the political process, that by its very nature political power attracts financial interests. These people also claim that by treating candidates equally, those whose appeal would ordinarily be limited due to their beliefs and philosophy have the same access to voters as those whose opinions are more popular. Furthermore, critics say this has led to the ability of otherwise marginal candidates on the political left and right to be elected to the Legislature when they would otherwise not attract enough private financing to be viable candidates.

On the other hand, supporters say Clean Elections has expanded the opportunities for people to become involved in the political process and has blunted the impact of special interest groups. They point to debates sponsored by the commission that give all candidates the opportunity to be heard, and argue that rather than continually seeking donations, candidates spend more time interacting with voters.

The Phoenix-based Goldwater Institute has challenged the constitutionality of the Clean Elections system, claiming it violates the First Amendment provisions regarding free speech. In January 2010, U.S. District Court Judge Roslyn Silver agreed and ruled that the matching funds portion of Clean Elections is unconstitutional. The case was appealed to the Ninth Circuit Court of Appeals—which reversed the ruling—and eventually went to the U.S. Supreme Court. On June 8, 2010, the Supreme Court issued an order to

enforce the District Court's injunction against the use of matching funds until the Court rules on the underlying appeal of the Ninth Circuit decision.

Redistricting and "Safe" Districts

Arizona has a long history of contentious behavior when it comes to the drawing of legislative districts and the basis for electing senators and representatives.

From statehood until 1966, senators were elected from the state's various counties, without regard to population. The original Arizona Constitution specified either one or two senators per county, later changed to two senators from each county. Since rural areas had much smaller populations but many more total counties, agricultural and cattle interests dominated the state Senate. Members of the House of Representatives were elected on the basis of population, also within counties. Politically, this led to the dominance of the Democratic Party in Arizona politics for the first 50 years of the state's existence.

The 1965 lawsuit, *Klahr v. Goddard*[vii] forced the redrawing of the state's congressional districts in order to comply with the U.S. Supreme Court's principle of "one man, one vote." In its ruling, the court said the existing apportionment scheme was "shot through with invidious discrimination," in some cases producing disparities of nearly four to one. The 1966 reapportionment, drawn entirely based on population, caused a seismic shift in Arizona political power. Rapidly growing urban areas of the state, particularly Maricopa County, saw their influence suddenly mushroom and, for the first time in the state's history, Republicans became the majority party in both chambers of the Legislature.

This decision, however, did not end the wrangling over how districts were drawn. In succeeding decades, lawsuits were filed and critics made accusations that districts were being gerrymandered in order to continue dominance of the majority party. In 2000, Arizona voters approved yet another initiative proposition, amending the Constitution to create "an Independent Commission of balanced appointments to oversee the mapping of fair and competitive congressional and legislative districts."[viii]

The five-member commission operates independently of the Legislature and is politically balanced with two Democrats, two Republicans, and one Independent. The majority and minority party leaders in the Arizona House and Senate make the appointments, with those four appointees choosing a fifth member, a registered Independent, to be chairman. Using its own staff, the commission draws the district maps using a set of objective standards outlined in the Constitution.

Districts are to contain roughly equal population numbers for both congressional and legislative districts and are to be as compact as possible, to respect "communities of interest," and use geographic features, existing city and county boundaries and undivided census tracts as much as possible.

The commission is instructed, “to the extent practicable,” to create politically competitive districts, provided doing so does not conflict with the other goals. A frequent criticism of legislative districts is that they are not politically competitive, that there are a high number of “safe” districts, whether for Democratic or Republican candidates, and that only a few districts can be considered truly competitive.

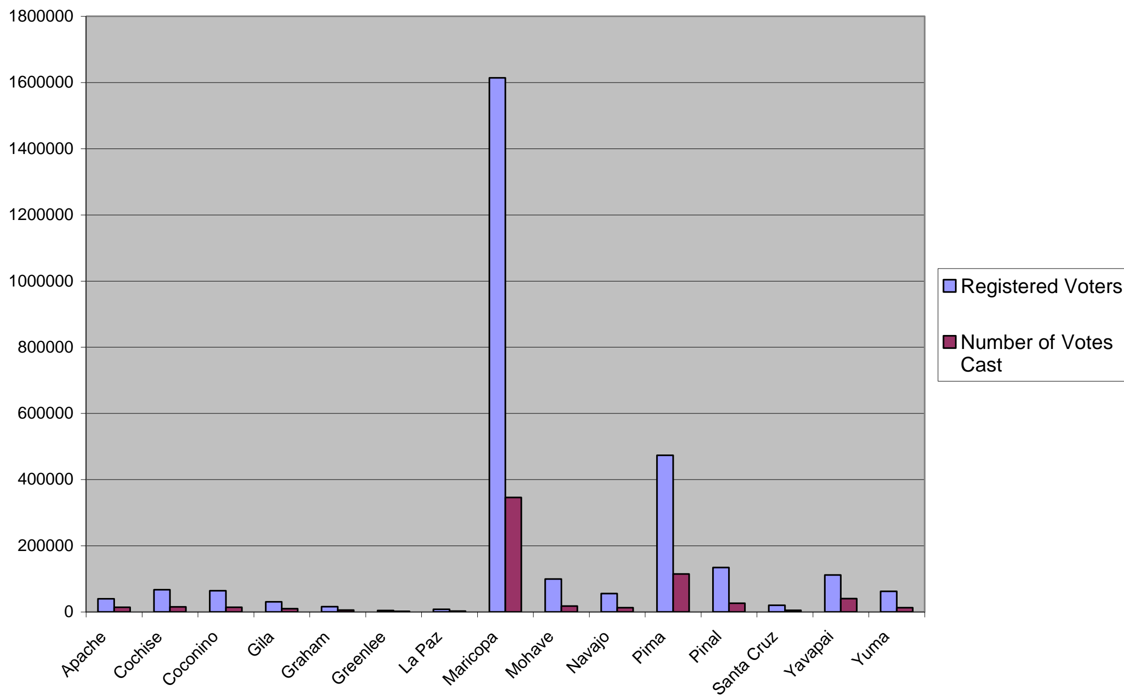
The Citizens Clean Elections Commission states that 21 of the state’s 30 legislative districts are “one party dominant,”[ix] defined in statute as “a district in which the number of registered voters registered in the party with the highest number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as 10% of the total number of voters registered in the district.”[x] A recent article in the *Arizona Republic* reported that “since May 2002, when the political boundaries were redrawn, incumbents from both parties have won all 77 state Senate races in which they ran.”[xi]

Complicating this situation is the increasing number of voters who do not claim membership in either major political party, the so-called “Independents.” Non-affiliated voters now make up close to one-third of the state’s registered voters: 915,981 out of the 3.1 million. Republicans are at 1.13 million and Democrats number 1.04 million. In 1998, voters approved a proposition allowing Independents to vote in a party primary of their choice;[xii] they must request a ballot of one of the political parties in order to do so.

The chairman of the Arizona Independent Redistricting Commission recently said many independents are unaware they can request a partisan ballot and vote in the primary.[xiii] Given the fact that independent registration numbers are expected to surpass both the Democratic and Republican party registration figures by 2016, their influence could be significant in selecting the major party candidates for the general election if they were to turn out in large numbers.

In the 2008 Arizona Primary Election, fewer than 23% of all registered voters cast ballots statewide (Figure 1.1).[2] The highest participation rate was in Greenlee County, with 39.2% of voters turning out (but only 1,648 out of 4,197 registered), and the lowest turnout was in Mohave County with 18% of registered voters casting ballots. Maricopa County, with the highest number of registered voters, had a turnout of 21.4%. Even at that rate, Maricopa County alone accounted for more than half of all the ballots cast in the entire state—more than 54%.[xiv]

[2] The turnout was slightly over 51% for the separate February 8 Presidential Preference election.



An increasing number of voters are choosing early ballots in the mail rather than going to the polls on Election Day. In 2008, only about one-quarter of voters cast ballots at polling places, down from 50% just a few years earlier.[xv] Some have suggested that conducting all elections by mail would increase the likelihood of voter turnout. In 1998, Oregon became the first—and so far only—state to institute all-mail ballots for every election. Analysis suggests voter participation has generally increased as a result.[xvi]

Among other possible electoral reforms are California's new "top two" primary election, which is being used for the first time in 2010, and "range voting," in which voters rate candidates on a 1–10 scale, a system advanced by economist Kenneth Arrow. He argues that different electoral system designs produce different results that may or may not reflect the true preference of voters.[xvii]

The Legislative Agenda

After 98 years of state legislation, nearly every possible topic has been the subject of a bill enacted into law. Today, the Arizona Revised Statutes are contained in 50 volumes covering thousands of pages. In that same time period, the Arizona Constitution has been amended some 200 times[xviii] (the U.S. Constitution has been amended only 27 times). Yet, each year there are hundreds of bills introduced on a wide variety of topics in addition to the constitutionally required bills that are intended to produce a balanced state budget.[xix]

Today, virtually all bills are simply amending existing statutes or adding new sections to topics already present. Bills are requested by any number of special interest groups

representing a wide spectrum of political, business, financial, and community entities. In many cases, groups that are engaged in the process of fundraising request legislation favorable to their business interests—homebuilders, contractors, realtors, bankers, environmental advocates, insurance companies, etc., but other groups that do not make financial contributions also request legislation—cities, counties, school districts, and advocates for social causes such as domestic violence, drunk driving, and human rights.

Simply being identified as a special interest group does not necessarily make one's cause honorable or dishonorable. However, many bills are introduced that do exempt certain businesses or industries from various kinds of regulation or taxation. These are frequently defined as "pro-business" or "economic development" bills, even though they have the effect of increasing profits or shifting a tax burden to private citizens who are not represented at the Capitol by lobbyists who have close relationships with powerful legislators.

Whether from liberal or conservative causes or organizations, private or public interest groups, intentionally or not, nearly all legislation in some way picks winners and losers. As John F. Kennedy said, "To govern is to choose,"[xx] and as in any aspect of American society, those with the greatest level of financial resources or interest in legislation tend to have the greatest access to legislative policy makers and frequently are the beneficiaries of legislation that they support.

Increased Political Polarization?

In districts where one political party holds a substantial majority (more than 50% with the remaining registration split between the second party and independents), critics often allege that the "real" election occurs in the primary, when partisan voters select the candidate that is virtually guaranteed victory in the general election simply by virtue of the registration numbers. While this situation is true more often than not, it is not necessarily always due to registration numbers, but rather to which types of voters tend to cast ballots in the primary election.[xxi]

There is a widespread, but not universal, belief that citizens who are more politically active and more ideologically driven—on both the left and the right—tend to vote in larger numbers in primary elections.[xxii] This trend, coupled with the availability of campaign cash through the Clean Elections system, which enables marginal candidates to run campaigns comparable to more mainstream candidates, may have contributed to the increased polarization of the Legislature in recent years. In Arizona and across the country, a number of political observers have opined that the collegiality and respect that used to exist after hours among political rivals has virtually disappeared. Members of the other political party are no longer seen as well-intentioned individuals who happen to have a different perspective on the issues; they often times are seen as enemies whose point of view and interests must be crushed.

In recent years, only a small number of members of the majority party of each chamber have been considered moderate or "swing" voters on various issues. In recent elections,

some of these members, such as Republican Sens. Tom O'Halleran and Pete Hershberger have been challenged in their respective primaries and have been defeated by more conservative candidates.

Whether friendly rivalry and collegiality is an idealized view of the past or not, it is exemplified by a story told by Chris Mathews, host of MSNBC's "Hardball" program and a former aide to House Speaker Tip O'Neill, about an encounter with his political rival, President Ronald Reagan. As Reagan prepared to deliver a State of the Union address, he stopped off in the speaker's room just off the House floor. Mathews jokingly said, "Mr. President, this is the place where we plot against you." "Not after six!" replied Reagan. "The speaker says that here in Washington, we're all friends after six o'clock."[xxiii]

Proposed Reforms

In order to change the perception that the members of the Legislature do not reflect the beliefs and values of Arizonans as a whole,[3] a number of structural reforms are being discussed by a variety of "good government" groups. Whether they will be adopted or not—or whether they would bring about the changes sought—is unknown. Yet there continues to be frustration with the status quo in the state Legislature, and new ideas continue to be discussed. Since the Legislature itself would have to approve any legislation or make ballot referrals, it is unlikely anything that substantially upsets the current structure will emerge from that body. The challenge is just as great for citizen initiatives, which are difficult and very expensive to get on the ballot. Virtually all initiatives today require the use of paid signature gatherers in order to meet the valid signature threshold.

Notwithstanding these institutional hurdles, here are some of the issues being suggested for legislative reform:

- Repeal or modify term limits. Proposals include complete elimination of term limits or changes to the length of service.
- Repeal the Clean Elections Act. Return to the system in which all candidates had to raise their own funds to run an election.
- Institute all-mail elections. While a substantial number of Arizona voters are already registered for early ballots by mail, this proposal would make Arizona reflect the Oregon law in which elections are by mail-in ballot exclusively. The thinking is that voter turnout would increase if people could vote at home at their convenience rather than having to go to a polling place on Election Day.
- Establish a full-time Legislature. As the state's population is well above 6 million and the issues are highly complex, some believe a full-time legislature with members paid a competitive salary, would attract a broader range of qualified candidates. There are currently 10 states with a full-time legislature, defined as

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[3] As an example, it took the legislature nearly a year of discussion to refer a ballot measure to temporarily increase the sales tax rate by one-cent to help offset the state budget deficit. Despite predictions by many members that the voters would never voluntarily increase taxes, the measure was approved 64% to 36%.

requiring 80% of the time for a full-time job.[xxiv] Whether these legislatures actually attract more qualified candidates or not is a highly subjective question.
- Create a non-partisan and/or unicameral legislature. Currently only the state of Nebraska has a non-partisan, unicameral legislature, something that took decades to develop.[xxv] Some people believe the elimination of party affiliation would reduce the level of bickering and improve the collaborative lawmaking process. Others disagree, saying a unicameral body eliminates the check and balance of the sister chamber, and that even without party labels, members' political affiliations are still well known.
- Use a top-two runoff. This change would require all candidates to run in a single unified primary election and, if no candidate received 50% plus one, the top two vote-getters, regardless of party affiliation, would face each other in a runoff at the general election. Advocates of this system think it would decrease the number of highly partisan or extreme candidates that can currently be elected by a minority of voters in a party primary election. In June 2010, California voters approved a ballot proposition creating such a system in that state, eliminating the separate party primaries.

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[i] Arizona Constitution, Article IV
[ii] Arizona Constitution, Article IV, Part 1 Section 1
[iii] 1998 Proposition 105, amending Arizona Constitution, Article IV, Part 1, Section 1, Subsection 6
[iv] A.R.S. § 16-322.
[vv] Arizona Constitution, Article V, Section 12.
[vi] 1998 Proposition 200, Citizens Clean Elections Act. ARS, Title 16, Chapter 6, Article 2.
[vii] 250 F.Supp. 537, 541 (D.C.Ariz.1966)
[viii]2000 Proposition 106, amending Arizona Constitution, Article 4, Part 2 Section 1.
[ix] Arizona Clean Elections Commission, "One Party Dominant Districts"
[x] ARS § 16-952(D)
[xi] The Arizona Republic, July 8, 2010, "Analysis: Arizona's political redistricting fails to meet goals"
[xii] 1998 Proposition 103, amending Arizona Constitution Article VII, Section 10
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Arizona's Executive Branch: The Plural Executive and The Governor as "First Among Equals"

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Key Points

- The Arizona office of the executive has eleven elected officials; governor, secretary of state, treasurer, attorney general, superintendent of public instruction, mine inspector, and five corporation commissioners
- Each office is elected differently and therefore can influence and involve the citizenry differently
- Every executive office has a varying level of authority, visible or not, and with this authority there can be strong offices, attorney general, or relatively weak offices, mine inspector, which can politicize these offices
- Arizona Proposition 111 is on the ballot this November and is making changes to the way each of the executive offices is elected, mostly changing some of them to appointments by the governor instead of elected by individuals, below it discusses some of the consequences of this change
- The governor is a powerful executive, these powers extent to calling special session (for example the budget sessions last year), introducing legislation and line-item veto

The institutional conflict between Arizona's legislative, executive, and judicial branches can be traced back to the constitution that was formed when Arizona became a state in 1912. The document also dispersed power within the executive branch.

The framers of the constitution established a "plural executive system" by providing for the direct election of multiple executive officials. The governor was but one these and had no formal control over the others. Subsequent Legislatures compounded the problem of executive leadership by regularly creating more agencies and administrative positions that were beyond the governor's direct supervision or power of appointment or removal.

Throughout the years, the governor's office has been strengthened to the point where it can be said that the governor is a "first among equals." Still, there are basic legal constraints on the office that dictate and sometimes interfere with the ability of governors to manage state affairs and exert policy leadership.

The original constitution called for the separate election of the governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction, mine inspector, and a three-member corporation commission to regulate the rates and operation of public utilities. The first Legislature added a tax commission of three members. By the end of the first legislative

session, the list of independently elected executives totaled 13.

The state continues to have a plural executive, though it has shrunk with the elimination of the elected office of auditor and the tax commission.[1] Hoping to end several years of political infighting and turmoil, voters sanctioned the addition of two more corporation commissioners in 2000, bringing the total to five.

Defenders of the plural executive system have based part of their argument on the simple belief that the people should and can directly rule and that, in this case, democracy depends not only on how many people can vote but also on how many offices they can vote for. They assume that voters are capable, at least over time, of making sound decisions on these offices.

Arizona Governor Ernest McFarland argued in the 1950s that people “are just as capable of electing other officials as they are of electing a governor” and “while the people at times do make mistakes, they will, in time, correct them.”[i] Defenders of the plural executive have also argued that it is unwise to concentrate all executive authority in a single office, because to do so is to invite corruption and the abuse of power. Far better, they contend, is a system in which several independently elected officials watch and check each other.

Along with a general defense of the plural executive system, special arguments have been advanced for the retention of specific elected offices and agencies. For the mine inspector and the corporation commission, the argument has long been made that direct election is the best way to safeguard against the agencies being unethically influenced by the companies they are supposed to regulate. The fact that the corporation commission performs certain judicial-like functions also is commonly cited as a need for retaining its independence from the governor.

Plural executive critics argue that the system fragments the management of the state’s affairs, hinders overall efficiency, invites rivalries and friction among executive officials (especially when they represent different political parties), creates a long ballot where voters are asked to pass judgment on candidates they know little about, calls for the election of people whose duties are essentially ministerial rather than policy-making (though candidates often disguise this by promising to do things that have little or nothing to do with the responsibilities of the office they are seeking) and may well result in the election of unqualified people (they have electability but lack the necessary training or experience to actually do the job). Proponents of substituting gubernatorial appointment for election argue that the governor, as an agent of the people, can do a better job than the people can do for themselves in choosing qualified officials.

Some of the elected offices are small and vest the elected head with little or no policymaking authority. They are more administrative in nature. This can be said about the positions of secretary of state, state treasurer, and state mining inspector (the only elected mining inspector in the nation). The attorney general, on the other hand, has had enough authority, visibility, and,

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[1] The auditor was essentially a bookkeeper and an accounts payable clerk for the state.
The functions of the office were shifted with voter approval in 1968 to the governor as part of the effort begun earlier in the decade to strengthen the office of governor in regard to financial management. Voters approved by a vote of 206,432 to 171,474. The Tax Commission’s functions were taken over by the Department of Revenue and formally ceased operations on January 1, 1979.

often, enough support in the public to be an independent force in state politics, sometimes to the distress of the governor and state legislators. The independently elected superintendent of public instruction often is an agenda builder on educational issues, but his or her official duties center on managing the Department of Education. The corporation commission is an important and powerful independent body. Arizona, though, is one of only 13 states with elected commissioners. In most states, comparable public service or public utility commissions are appointed by the governor.[2]

Some have complained that the state has too many elected officials, suggesting that the governor or Legislature should appoint heads of various elected offices and bodies. A series of articles in the *Arizona Republic* in 2006 focused on the need to make the positions of mine inspector and state treasurer appointive by either the Legislature or the governor.[ii] Survey research conducted at the time indicated that less than 7% of the public knew the mine inspector office even existed. In 2009, a reform group headed by retired U.S. Supreme Court Justice Sandra Day O'Connor called for making the positions of mine inspector, treasurer, and the superintendent of public instruction appointive rather than elective.

While these proposals stalled in the past, voters will have an opportunity in November 2010 to decide on whether they want to rename the office of secretary of state the office of lieutenant governor and. The measure would also place the lieutenant governor on the same ticket as the governor, the same way the U.S. president and vice-president are elected. Under the proposal (Proposition 111), candidates for lieutenant governor would run independently of gubernatorial candidates in party primaries, but the winning candidates for the two positions would run on a single ticket in the general election.[3] The lieutenant governor would become governor should a vacancy occur in that office. The measure, if approved by the voters, would go into effect beginning in 2015.

Under current Arizona law, adopted by constitutional amendment in 1948, if the governor's office is vacated because of death, incapacitation, resignation, impeachment, recall, or any other reason, the secretary of state is the first in line, followed by the attorney general, state treasurer and superintendent of public instruction, in that order. Succession has been a recurring event in Arizona. Since statehood five secretaries of state have become governor because of a vacancy, and on two occasions the secretary of state entering office was of a different political party than the governor being replaced. In 1988, Democrat Rose Mofford replaced Republican Evan Mecham, who was impeached and ousted from office by the Legislature. In 2009, Republican Jan Brewer replaced Democrat Janet Napolitano, who resigned to accept a position in the Obama administration.[4]

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[2] Arizona voters in 1968 rejected a ballot measure empowering the governor to appoint corporation commission members by a vote of 210,862 to 179,676.

[3] In 24 of the 43 states with a lieutenant governor, this official and governor run on the same ticket. In eight of these, candidates for governor and lieutenant governor run together in both the primary and general election. In sixteen other states, they run together only in the general election. Candidates for governor and lieutenant governor in the remaining nineteen states are elected on separate ballots.

[4] Those in line to become governor must be holding the office by virtue of an election. In 1978 the governorship passed on to Bruce Babbitt who had been elected Attorney General after the death of Governor Wesley Bolin because the secretary of state at the time, Ross Mofford, had been appointed to the position of secretary of state.)

Given the proximity to the governor's office through the line of succession, "lieutenant governor" is a more appropriate title than "secretary of state" for the office. The proposed Proposition 111 also has value in eliminating the possibility of a change in party control through succession to the first in line, thus easing the transition period and helping to ensure policy continuity.

Under the proposal, Arizona would join Hawaii and Utah as states with a lieutenant governor elected with the governor who serves as the state's chief election officer. Critics, however, are concerned that by having an ally in the lieutenant governor's office in charge of what the independently elected secretary of state once handled would give the governors an enhanced and hard to resist opportunity to influence decisions regarding voting and elections in their own or their political party's interest. Other states have found other less politically charged tasks for the lieutenant governor, e.g., working on economic development. Critics of the proposal also contend that the essentially ministerial duties of the secretary of state office are not of much value as a training ground for the governor's job.

Partially because of the plural executive system, the office of governor is weak compared to the president of the United States when it comes to administering laws. Departments with elected heads are beyond the governor's reach. Beyond this though, the governor has only limited authority to appoint, supervise or remove administrators or to manage fiscal affairs. In several situations, the governor's appointment power is shared with a board, commission, or the Legislature, whose confirmation is required.

Often, administrators have terms longer than those of the governor, making it difficult for the governor to remove them from office. To remove officials from various independent boards and commissions prior to the expiration of their terms, the governor must establish wrongdoing or malfeasance in office. It is not enough that the appointee disagrees with the governor on matters of policy.

When it comes to budgeting, a significant breakthrough for the governor came in 1966, when Arizona became the last state in the union to adopt an executive budget. With that, the governor gained the authority to review department budgets, integrate their spending requests into a single document, and submit that document to the Legislature. Up to the mid-1960s, the governor's budget amounted to little more than a compilation of information supplied by administrative agencies.

The executive budgeting system improved the governor's ability to control the spending of administrative agencies and provide overall management. In 1966, however, the Legislature partially offset the increase in the governor's budget-making role and kept its own influence intact by creating a legislative budget office. Since that time it has effectively used a Joint Legislative Budget Committee, which has its own permanent staff to do independent research, analyze the governor's budget requests, and prepare alternative budgets for each agency.

The Legislature has unlimited power to change the governor's budget requests and, in practice, has seldom passed up the opportunity to alter the governor's proposals. The governor's ability to control agency spending is limited by the fact much of the budget is legally mandated rather than

discretionary spending. Such mandatory spending is often formula-driven, or determined by the number of people eligible for certain services.

In terms of legislation, Arizona governors, like those in other states, have the authority to recommend measures to the Legislature, call special sessions, and veto legislation. The governor outlines his or her legislative program in a “state of the state” message given at the beginning of each legislative session. This message is followed up with specific proposals.

Governors can call special legislative sessions at their discretion. The constitution dictates that during a special session, legislators may only consider those matters the governor specifically identifies. Legislators must leave their homes and jobs to attend the session. Just by threatening a special session, the governor may force action during a regular session. On the other hand, calling a special session may antagonize the legislators, and the governor may face embarrassment if his or her proposals are not accepted.

Legislators can avoid the possibility of a veto by referring a measure directly to the voters. Legislators have regularly referred seven or more measures directly to the voters since 1998.[iii] Otherwise, every bill must go to the governor for approval or rejection.

The veto has been particularly useful to governors confronted with Legislatures dominated by the opposite party. This was true, for example, of Democratic governors Bruce Babbitt and Janet Napolitano; the latter set the record for vetoed bills with 58 in 2005.[iv] A governor’s veto can be overridden only by a two-thirds vote of the members in each house—a requirement that makes an override extremely rare. Once legislators realize the governor can use the veto effectively, they are apt to include the governor on early discussion of issues in order to avoid conflict.

Governors in Arizona, like governors in more than 40 other states, have a line-item veto that allows them to strike out particular items in appropriation (spending) bills. The item veto gives the governor greater opportunity to reduce the general level of spending—though governors have also found that it can be used to increase spending beyond what the Legislature intended. Both Governor Napolitano and Governor Brewer have used the item veto to eliminate spending cuts approved by the Legislature, thus increasing overall spending.

The governor’s line-item veto has been hindered by the legislative practice of lumping appropriations for programs together on one bill, making it impossible for governors to cut the appropriations for programs he or she dislikes without cutting those he or she supports. However, as with the regular veto, a governor can use the threat of an line-item veto to bargain with legislative leaders or individual legislators.

Term limits also influence the governor’s position vis-à-vis the Legislature. Initially the Arizona Constitution granted governors only two-year terms, but placed no restriction on the number of times voters could return a governor to office. In 1968, voters extended the term to four years, giving governors a larger time frame in which to pursue and implement their polices. In 1992, however, Arizona voters opted for a two-term limit for all state officials, including the governor. Under such restrictions, governors can expect to lose a considerable amount of influence as they near the end of their second term. For example, legislators can thwart their policies simply by

moving slowly on their requests.

Overall, the governor is clearly more than a "first among equals." Positioned at the center of the state system, he or she is the most visible political figure. The governor can lay claim to being chief administrator and chief legislator and other titles such as chief of state, in representing the state on important formal occasions; chief magistrate, in making quasi-judicial decisions on the fate of those accused or convicted of crimes; and as commander in chief in exercising control over the state police and the National Guard, except when the president calls the Guard into the service of the federal government.

Overall, the personal characteristics of governors (their goals, experience, and talents) and the political circumstances in which they find themselves may matter most in determining what they try to accomplish and are able to achieve. Still, the basic conditions of the office set by law can, and in some cases do make it more difficult for them to function effectively in providing leadership.

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[i] Ernest W. McFarland, Mac: The Autobiography of Ernest W. McFarland (Copyright, Ernest McFarland, 1979), p. 232.
[ii] See for example, "The Issue: In Pursuit of Good Government; End the Fiefdoms in Obscure State Offices," *Arizona Republic* (May 28, 2006): V4.
[iii] *Political 2010 Almanac*, Phoenix, AZ: Arizona Capitol Times, 2010): 69.
[iv] *Political 2010 Almanac*, Phoenix, AZ: Arizona Capitol Times, 2010): 84.

Arizona's Judicial Branch of Government

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Key Points

- Provides a brief history of the Arizona Judicial System and how Arizona judges fit into and have influenced the national judicial system
- Gives a description of each level of the courts in Arizona and who is effected by each level
- How to become a merit selected judge and how individuals fit into that process
- What the process is to hold both elected judges and merit selected judges accountable
- What business the courts conduct on a daily basis. Which courts handle which types of cases and how that helps the state generate revenue
- What the courts are doing to prepare and provide for the future. Discussion of the Justice 2020 Strategic Plan and how its five goals impact individuals.
- There are many ways that the courts are preparing for the future including; focusing on the merit system instead of electing judges, how to incorporate new technology into the court system, maintaining accessibility for the diverse population in Arizona, and keeping funding at appropriate levels in order to provide necessary services

Introduction

Arizona's "integrated judicial department," defined in Article VI of the state constitution, consists of a supreme court, an intermediate appellate court, a superior court of general jurisdiction, and limited jurisdiction courts. The constitution assigns to our judiciary the important responsibilities of resolving civil disputes, determining guilt or innocence in criminal matters, and ensuring that government itself complies with the law.

Courts interpret and apply the federal and state constitutions and statutes enacted by the Legislature or approved by the voters. The judiciary is not intended to reflect popular opinion in its decisions, but instead is to fairly and impartially apply the law, even if the result may be unpopular.

In order for courts to fairly and impartially apply the laws, they must be staffed by qualified judges and other personnel and they must be insulated from forces that could improperly influence their decisions. Since statehood, the courts in Arizona have been designed as separate and independent branches of state, county, and city government. Over the state's history, we have amended our constitution to improve the quality and accountability of judges by adopting a merit selection system and procedures to evaluate judicial performance.

The constitution gives the Supreme Court administrative supervision over all the courts of the state. The Supreme Court adopts rules for Arizona courts, regulates the practice of law, and oversees other responsibilities assigned to the judicial branch, such as the probation system.

History

During the last 100 years, many individuals and events have shaped the development of Arizona's judiciary. Some highlights are:

- **December 9, 1910:** The state constitutional convention approves Arizona's constitution, which requires both a popular vote and federal approval to become effective. After vigorous debate, the convention concludes that judges, like other elected public officials, should be subject to recall.
- **February 14, 1912:** Arizona finally achieves statehood. In 1911, President Taft vetoes a statehood bill because he opposes judicial recall. Arizona's voters approve a revised constitution omitting the recall for judges. In the first election after statehood, the voters amend the constitution to restore this provision.[i]
- **1912**: The Arizona Legislature establishes superior, juvenile, and justice of the peace courts. The first Arizona Supreme Court includes Justices Alfred Franklin, Donald Cunningham, and Henry Ross (who became the longest serving justice, completing a 33-year tenure in 1945).
- **1913:** The Arizona Legislature establishes police (municipal) courts for each of the state's incorporated cities and towns.
- **1914:** Nellie T. Bush and Emeline Ferguson are the first women elected as justices of the peace, beginning a long tradition of strong female leadership in Arizona's courts.
- **1953:** The superior court rules that segregation in high schools is unconstitutional.
- **1959:** Raul Castro is elected to the Pima County Superior Court and is the first Hispanic superior court judge. In 1974, he will be elected Arizona's governor.
- **1960:** Voters approve the Modern Courts Amendment, thereby amending Article VI to:
  - Give the Supreme Court administrative supervision over all courts of the state
  - Increase the minimum number of Supreme Court justices from three to five
  - Give the Supreme Court authority to make rules governing all procedural matters in any court
  - Authorize the creation of the court of appeals
  - Require that justices and judges not practice law or hold any other public office or employment during their term of office
  - Require that they hold no office in any political party or campaign in any election other than their own
  - Require that Supreme Court justices, court of appeals judges, and superior court judges retire at age 70
- **1961:** Lorna Lockwood, who had served on the Maricopa County Superior Court, becomes the first woman to serve on Arizona's Supreme Court.
- **1963:** Thomas Tang is elected to the Maricopa County Superior Court. In 1977, Judge Tang will be the first Chinese-American appointed to the federal appellate bench when he is appointed to the Ninth Circuit Court of Appeals.

- **1964:** The Arizona Legislature establishes the Court of Appeals.
- **1965:** Lorna Lockwood becomes the nation's first female state chief justice. Hayzel B. Daniels is appointed to the Phoenix Municipal Court and becomes Arizona's first African-American judge.
- **1970:** Voters establish the Commission on Judicial Qualifications (now called the Commission on Judicial Conduct). The Commission investigates misconduct complaints against judges.
- **1974:** Voters approve merit selection and retention elections for justices, state appellate judges, and superior court judges in Pima and Maricopa counties.
- **1981:** Sandra Day O'Connor is the first woman appointed to the U.S. Supreme Court. A proponent of merit selection, she had been elected as a superior court judge in 1974 and appointed to the Arizona Court of Appeals in 1979.
- **1990:** Arizona Courts Building is completed.
- **1992:** Voters approve Proposition 109, an amendment to the constitution that revises the merit selection process to increase the public's role and establishes a process for evaluating judicial performance.
- **2005:** Roxanne Song Ong becomes the first Asian-American woman to preside over the Phoenix Municipal Court—one of highest volume courts in the United States.

The Supreme Court

The Arizona Constitution now stipulates that the Supreme Court shall consist of not less than five judges serving six-year terms. Before the 1960 Modern Courts Amendment, three justices served on court. Since 1961, Arizona statutes have specified that the court shall consist of five justices.

The Supreme Court has discretionary jurisdiction for appeals from the two divisions of the Arizona Court of Appeals; that is, the Supreme Court may agree, in its discretion, to review a case when requested by one of the parties. The Supreme Court also has mandatory appellate jurisdiction in cases involving the death penalty and certain election-related matters, and it has original jurisdiction in disputes between counties.

The Supreme Court has administrative supervision over all courts of the state and has the power to make procedural rules related to all courts. The Supreme Court also disciplines judges and regulates the state bar, including the admission and discipline of attorneys.

Court of Appeals

To accommodate increasing case loads, the 1960 Modern Courts Amendment authorized the Legislature to create an intermediate appellate court. In 1964, the Legislature created a court of appeals. This court hears appeals from the superior court, the tax court, and the industrial commission and appeals in unemployment compensation cases. The court of appeals is divided into two divisions by statute. Division One consists of a chief judge and 15 other judges who hear cases in three-judge panels in Phoenix. Division One serves Maricopa, Yuma, La Paz, Mohave, Coconino, Yavapai, Navajo, and Apache Counties. Division Two consists of a chief judge and four other judges who hear cases in three-judge panels in Tucson. Division Two serves

Pima, Pinal, Cochise, Santa Cruz, Greenlee, Graham, and Gila Counties. Court of appeals judges serve six-year terms.

Superior Court

The superior court is Arizona's general jurisdiction trial court. Thus, the superior court has original jurisdiction over all cases in which exclusive jurisdiction is not vested by law in another court, including cases of equity and law relating to title of real property, probate, family law, felonies, and other matters. Superior courts also have appellate jurisdiction in cases arising from limited jurisdiction courts. The Superior Court consists of 175 judges who are at least 30 years old, of good moral character, admitted to the practice of law in Arizona, and a resident of Arizona for the five years immediately before taking office. The Arizona Constitution requires judges to rule promptly: "Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the date of submission thereof."[ii]

Limited Jurisdiction Courts

Arizona's limited jurisdiction courts include justice of the peace and city or municipal courts. These judges hear the vast majority (93%) of the nearly 3 million cases annually processed in the state court system. In 2009, Arizona courts resolved approximately 520,000 criminal cases, 392,000 civil cases, 1.9 million traffic cases, and 130,000 other cases. Municipal courts resolved approximately 1.7 million cases; justice courts nearly 1 million; superior courts 235,000; the court of appeals 3,600; and the Supreme Court just over 1,000.

The Arizona Constitution creates justice of the peace and other courts "inferior to the superior court." Currently 87 elected justices of the peace serve in statutorily created precincts throughout Arizona. Justices of the peace are not required to be trained in the law. These judges preside over civil cases—including evictions—where the amount in controversy is $10,000 or less, civil and criminal traffic matters, felony initial proceedings, preliminary hearings, and criminal misdemeanors where the punishment does not exceed a fine of $2,500 or six months' imprisonment. Justice courts also include a small claims division for civil matters involving $2,500 or less. Volunteer hearing officers often preside over these small claims matters and attorneys can appear only if the parties agree in writing.

Arizona law requires all incorporated cities or towns to establish a municipal court or to contract with the local justice court to hear cases in the municipality. Approximately 154 judges serve in more than 80 municipal courts around the state. Municipal courts share concurrent jurisdiction with justice courts except for civil disputes. In some rural communities, the municipal and justice courts are consolidated. Municipal judges are appointed for a minimum of two-year terms, except in Yuma where they are elected.

Accountability - Judicial Selection and Performance Review

Arguably no other public officials are subject to the same degree of accountability as judges. Elected judges obviously stand before the voters to obtain or keep their office. Merit-selected judges are subject to periodic public performance review and retention elections. All Arizona judges are subject to discipline under the authority of the Commission on Judicial Conduct.

Supreme Court justices, court of appeals judges, and some superior court judges are selected by a merit system. As first adopted, the merit system applied to superior court judges only in counties with 150,000 or more people, which then comprised Maricopa and Pima Counties. In 1992, voters increased the population threshold to 250,000. After the 2010 census, Pinal County is expected to implement merit selection for its superior court judges. The constitution allows the voters of a county, regardless of population, to approve the use of merit selection, but currently all counties other than Maricopa and Pima elect their superior court judges.

Under the merit selection system, persons who desire to become judges submit applications to a nominating commission that is comprised of 10 non-lawyers and 5 lawyers. Separate commissions exist for the Appellate Courts, the Maricopa County Superior Court, and the Pima County Superior Court. The chief justice, or her designee, chairs the commissions but generally does not vote unless it is necessary to resolve a tie. The applications are made public, and each commission, after soliciting public comment, identifies certain candidates to interview. These interviews are also conducted in public, as are most of the commissions' deliberations. Ultimately, a commission will send the governor a list of at least three nominees for each judicial vacancy. The governor must make his or her appointment from the list of nominees.

The 1992 amendments also required the creation of a process for evaluating the performance of judges appointed under merit selection. This process, administered by the Arizona Commission on Judicial Performance Review, includes surveys from jurors, witnesses, litigants, administrative staff, and attorneys who have interacted with the judge in a judicial or administrative setting. The public also provides input through written comments and public hearings. The commission distributes summaries of the performance reports to the public before each general election.

Commission on Judicial Conduct

In 1970, Arizona voters approved a new Article VI.I, creating the Commission on Judicial Conduct. The 11 commission members include 6 judges appointed by the Supreme Court, 2 lawyers appointed by the State Bar of Arizona, and 3 citizens who are neither lawyers nor judges appointed by the governor. Since 2006, the commission has posted resolved complaints and related disciplinary orders on its website. On the commission's recommendation, the Supreme Court may suspend or remove a judge for misconduct. Apart from the provisions of Article VI.I, the constitution also authorizes the removal of judges by impeachment or recall.

The Business of the Courts

The Arizona Constitution provides that the "supreme court shall appoint an administrative director and staff to serve at its pleasure to assist the chief justice in discharging his administrative duties."[iii]. The Administrative Office of the Courts consists of eight divisions and manages the work of the judicial branch throughout the state.

The Arizona court system employs more than 10,700 staff in 200 facilities around the state. The courts handle nearly 3 million cases annually—an average of 11,647 filed every working day.

In fiscal year 2009, the courts' statewide revenue totaled $409.3 million, largely through the collection of fees, fines, or other penalties. Municipal courts generated 47% of the total revenue; justice courts, 29%; superior courts, 23%; and appellate courts, a little more than 1%. Of the total court system revenue, the state received 44%, counties received 30%, and cities and towns 26%.

During fiscal year 2009, the courts expended $740.7 million. Courts are funded through several sources: county – 64%, state – 21%, municipal – 14%, and federal/private – 1%.

The judicial branch receives only 1.4% or ($120 million) of the state's general fund budget. Overall state funding for the courts is just $168 million.

The judicial branch also provides probation services throughout the state. Through probation services, the judiciary monitors some 85,000 adults and 11,000 juveniles and also manages 14 juvenile detention centers.

Administrative Oversight of the Courts

With the goal of improving judicial administration, the Arizona Judicial Council (AJC) helps oversee the judicial branch. The AJC consists of 25 members including judges, attorneys, and 9 public members. The AJC assists the Supreme Court and the chief justice in developing and implementing court policies and procedures, maintaining uniformity in court operations, and coordinating court services. The AJC also oversees the work of seven committees focusing on various courts and separate commissions on minorities, victims, and technology.

Strategic Agenda – Justice 2020

The AJC adopted the courts' strategic plan, *Justice 2020, A Vision for the Future of the Arizona Judicial Branch,* on December 16, 2009. The plan is available online at http://www.azcourts.gov/LinkClick.aspx?fileticket=esO0WyCB7L0%3d&tabid=942.

In the strategic plan, Supreme Court Chief Justice Rebecca White Berch explains that

> "While our justice system undoubtedly looked quite different a century ago, the Arizona Supreme Court's essential vision remains unchanged: to provide the people of Arizona with a court system that fairly and impartially administers

> justice and efficiently resolves disputes. Courts must ensure that the rule of law protects the rights of all."

Goal one of the strategic plan focuses on using technology effectively, simplifying and enhancing the legal and judicial system, and improving public access, transparency, and accountability. Specifically, "the objective is not simply to adopt new technology for its own sake, but to solve business-process problems, provide prompt, reliable information to decision makers, and improve service to the public." To improve public access, case information and documents must be readily available electronically. Simplifying court rules and streamlining case management should increase access and public trust and confidence in the judicial system.

Goal two of the strategic plan stresses the importance of maintaining a professional workforce and improving operational efficiencies. The plan states, "The Judicial Branch must continue the professional development of judges and court employees to ensure that they adhere to the highest standards of competence, conduct, and accountability." In order to remain free of political influence, the courts must have a consistent and reliable source of funding. While case filings increase, resources diminish. This conundrum challenges the courts' ability to perform statutory and constitutional duties.

Goal three of the plan explains the benefits of improving communication with the public, other branches of government, and justice system partners. "In every circumstance, success depends upon timely communication of clear, concise information," the plan says. The courts are developing and deploying a communication strategy that enhances online resources such as web pages and social networking tools.

Goal four outlines the courts' plans to protect vulnerable children, families, and communities. The courts must consider the rights of parents and the safety and well-being of children. Furthermore, with significant increases in Arizona's aging population, the courts must hold fiduciaries accountable to protect seniors from fraud. In addition, the plan states that "holding those convicted of crimes accountable and reducing their likelihood of re-offending are central to protecting Arizona's communities." The plant calls for the courts to "provide a balanced approach to probation that holds probationers accountable, keeps our communities safe, and provides treatment and rehabilitative services to offenders."

Goal five sets forth the courts' plan to improve the state's legal profession. Currently the State Bar of Arizona includes almost 20,000 active and inactive attorneys. In regulating the practice of law, the Supreme Court seeks to protect the public by requiring Arizona attorneys to meet the highest standards of professionalism and ethical conduct.

The courts and the bar have improved the attorney discipline system in an effort to maintain a fair and impartial discipline system, while decreasing the time and cost to process discipline cases. The Supreme Court also establishes qualifications for admission to practice law in Arizona. Recently, the court ushered in a new process allowing "admission on motion" for attorneys who meet Arizona character and fitness standards and are licensed in other states that parallel Arizona's admission requirements and allow reciprocal admission. The court is also

considering the use of a national uniform bar examination, which could reduce the costs and other burdens on applicants seeking admission to practice.

Future Trends

Future Trends in State Courts 2010, a report prepared by the National Center for State Courts (NCSC), identifies challenges confronting courts nationwide and practices that could improve court operations. The report includes articles by many knowledgeable and distinguished commentators.

Justice Sandra Day O'Connor emphasizes the importance of judicial independence in her article, "Importance of Civic Partnership: How Our Courts Can Help Maximize State Court Civics Education Initiatives." She notes:

> "Judicial independence is critical to our American democratic system of checks and balances. The courts must be insulated from political influences so that they can apply the law fairly and without intimidation by other parts of the government or majority whims. The threat to judicial independence is particularly acute for state judges, who do not enjoy constitutional guarantees for job security or level of remuneration and who are more vulnerable to political forces."

Justice O'Connor believes that increasing public awareness of the separation of powers protects judicial independence. In her NCSC article, Justice O'Connor explains that the Conference of Chief Justices and Conference of State Court Administrators each concluded, "Civic engagement is essential to maintaining our representative democracy" and encouraged states to "strengthen and revitalize civics education." To that end, Justice O'Connor's online "Our Courts Project" (www.ourcourts.org) features online games, videos, and lesson plans. She concludes, "Only a citizenry knowledgeable about civics and government can appreciate that courts must be independent from the political branches of government, and that judges have a unique role requiring them to be unresponsive to political or personal biases."

We need to preserve and improve the state's judicial merit selection system and the courts' judicial education program, which have combined to give Arizona a court system that is widely praised by litigants and lawyers in Arizona and other observers nationally.

Last year, Justice O'Connor told the Economic Club of Phoenix that "If I could do one thing to protect judicial independence in this country, it would be to convince those states that still elect their judges to adopt a merit selection system and—short of that—at least do something to remove the vast sums of money being collected by judicial candidates, usually from litigants who appear before them in the courtroom."

Arizona courts are committed to "continue the professional development of judges and court employees to ensure that they adhere to the highest standards of competence, conduct, integrity, professionalism, and accountability."[iv]

Evolving technology is another ongoing challenge facing Arizona's courts. To adapt to these changes, courts will need the leadership and resources to modernize procedures and practices ranging from case filing (the courts are working to implement an electronic case filing system statewide) to courtroom construction. In light of technological change, NCJS President Mary Campbell McQueen warns, "reengineering is essential for the long-term health of the court system."

Arizona courts will also need to remain accessible to the state's diverse population. The courts are committed "to serve the growing number of non-English speaking members of the public, information about court processes and procedures must be provided in languages other than English, and the number of available, qualified interpreters must be increased."[v] In addition, the courts will work to "expand cultural awareness and sensitivity training for judges, court staff, probation officers, and volunteers."[vi]

Finally, as the economic recession continues to adversely impact Arizona courts, a stable source of funding becomes more imperative. In a 2009 report, *How Courts are Weathering the Economic Storm*, the NCSC warned that reduced resources may result in difficulty filling judicial vacancies, furloughing or reducing staff, reducing hours of operation (several Arizona courts already close on Fridays), increasing court fees, increasing case backlogs, and restricting successful problem-solving courts.

Arizona courts must receive adequate funding in order to afford access to justice and to protect the public. Well-funded courts also make good fiscal sense: effective probation services can avoid unnecessary spending on incarceration, and efficient collection of fines and penalties can generate substantial revenues for state and local governments. Finally, funding is necessary to allow investments in technology that can significantly reduce costs over time for both courts and litigants.

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[i] John D. Leshy, *The Making of the Arizona Constitution*, 20 Ariz. St. L.J. 1, 56-58 (1988).
[ii] Article VI, Section 21
[iii] Article VI, Section 7
[iv] *Justice 2020,* Goal 2
[v] *Justice 2020,* Goal 1
[vi] *Justice 2020*, Goal 2

Intergovernmental Relations: The State And Local Governments

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Key Points

- Arizona's political system is a mixture of many governments where political power is both diffused and shared but legally, state government supersedes county and local government.
- Municipalities have more flexibility than counties because counties are directly controlled by the state legislature.
- The debate about where to draw the line regarding state authority over counties and municipalities embodies the push-pull of state-local relations but Arizona courts generally limit local power and authority.
- Counties, cities, and towns have created statewide voluntary organizations to represent their interests at the state Legislature, the executive, and the judiciary.
- Fiscal issues that relate to the allocation of public resources are at the core of intergovernmental relations in Arizona. The intergovernmental relations picture is clarified by examining total public spending in Arizona, and by looking at which government branches increases spending and receive benefits.
- Counties, cities, and towns are not just partners with the state in providing services, but play the dominant role.

The Compound Republic

Arizona's political system is a mixture of many governments where political power is both diffused and shared. This system is dominated by one state government with separation of powers that constitutionally and statutorily authorizes and guides the creation and governance of other government units. Counties, cities, towns, school districts, community college districts, and special districts—each with its own locally elected governing body with legal and fiduciary responsibility—are all interwoven with the state and give Arizona's political system richness and complexity.

In addition, Arizona is home to 21 sovereign Indian nations whose governing bodies are also democratically elected and who pursue decisions and policies with other levels of government that will benefit and safeguard their sovereignty. The federal government plays a significant role in Arizona's political system as well, determined in large part by regulations and intergovernmental revenue transfers.

Decisions and actions of these governments ultimately direct the allocation of public resources and political power, and understanding the institutions that shape these relationships is helpful. James Madison once recognized the various influences on governance that the many levels exert in a democratic system and called it the "compound republic."

The various levels of the compound republic—federal, state, local, and tribal—are tied together by a multitude of factors: regulations, statutes, money, programs, political parties, political districts, and the play of interest groups among them. Interest groups in particular have a role in moving policy issues up and down through the system.

Other entities and organizations exerting influence on the compound republic—but that don't have publicly elected governing structures—include regional associations of governments (whose boards comprise an elected official from each jurisdiction and tribe in the county), non-governmental organizations that provide public services, colonias, community councils that represent unincorporated areas in counties, and homeowner and neighborhood associations.[1]

This intergovernmental system is similar to those of other states, although Arizona's number of local governments—655—is comparatively small. The average number of intergovernmental units per state is 1,611 and the average number of Indian tribes is 11. Table 1.1 presents the units of government in Arizona by county.

Table 1.1: Units of Government by County

County Name	Cities & Towns	Tribal Governments[2]	Community College Districts[3]	School Districts	Special Districts	Total Units
Apache	3	1	0	10	12	26
Cochise	7	0	1	22	20	50
Coconino	6	3	1	8	22	40
Gila	5	1	1	8	1	16
Graham	3	1	1	8	6	19
Greenlee	2	0	0	4	2	8
La Paz	2	1	0.5	6	10	19.5
Maricopa	24	2	1	55	74.3	156.33
Mohave	4	2	1	13	19	39
Navajo	6	2	1	14	33	56
Pima	5	2	1	16	23.3	47.33
Pinal	10	2	1	18	43.3	74.33
Santa Cruz	2	0	1	7	1	11
Yavapai	8	2	1	20	33	64
Yuma	4	2	0.5	9	13	28.5
Total=15	91	21	12	218	312	655

[1] Tanis J. Salant, "The Compound State," *Pieces of Power: Governance in* Arizona, Arizona Town Hall Report, October 2001, p. 130. Arizona's compound republic comprises one federal and one state government, 15 counties, 91 municipalities, 21 tribes, 33 state agencies, 218 school districts, 12 community college districts, 302 special districts, hundreds of NGOs, 80 colonias, scores of community councils, thousands of neighborhood associations, and 1,700 homeowners associations.

[2] Indian reservations extend across counties, but only tribal headquarters are designated by county (e.g., Navajo Nation headquarters are in Apache County). New Mexico's Pueblo of Zuni owns land in Apache County but is not counted as an Arizona tribe.

[3] Two tribes have their own community college districts, the Navajo Nation and the Tohono O'odham Nation.

Only Delaware and Hawaii have fewer counties than Arizona's 15, and with 91 municipalities, Arizona ranks far below the national average of 344 per state. Special districts, which numbered 312 in 2001, are those governed by independently elected boards and deliver one service. Examples of this type of single-purpose government include the Central Arizona Project, domestic water improvement, hospitals, and road districts.

This chapter covers legal, procedural, and fiscal aspects of local-state relations and the institutions that shape them. Relationships are viewed from the perspective of counties, cities, and towns.

Local-State Legal Relationships

In a legal sense, state government is superior to counties and municipalities. Local governments, especially counties, are the legal creation of states. The Arizona Constitution, under Article XII, created counties as bodies politic and corporate "to be the counties of the State" and established all elected officers, whose compensation, duties, powers, and qualifications are fixed by law. Article XIII provides for the creation of cities and towns by the Legislature rather than by "special laws." Municipal corporations may also frame and adopt charters, enter into franchises, and engage in businesses and enterprises. Counties are circumscribed in Arizona Revised Statutes (ARS) Title 11, which contains 10 chapters, 58 articles, and hundreds of sections that both enable and restrict county governance.

ARS 11-202 gets to the heart of county-state relations. It states that counties possess "powers expressly provided in the constitution or laws of this state and such powers as are necessarily implied therefrom."

Counties may only do what the Legislature allows them to do. Cities and towns, as expressed under ARS Title 9 (with 12 chapters, 44 articles, and hundreds of sections) are given, "all the powers, duties, rights and privileges as granted … under the laws and constitution of this state." In case law and practice, however, municipalities can engage in activities that are not prohibited by statute.[1]

Municipalities clearly have more latitude and flexibility than do Arizona counties. In the 1931 case *Price v. State*, the court ruled that "powers granted to a city are those granted in express words, those necessarily or fairly implied in or incident to powers expressly granted, and those essential to accomplishment of declared objectives of corporation."[2] Land use appears to be the most heavily regulated area of municipal powers, as exemplified in Title 9, Chapter 4, Articles 6, 6.1, 6.2, 6.3, 6.4, 7 and their 48 sections that tighten latitude.

The debate about where to draw the line regarding state authority over counties and municipalities embodies the push-pull of state-local relations. As a 1938 decision of the Arizona Supreme Court ruled, "in the absence of a constitutional restriction, the power of the legislature over municipal corporations is practically unlimited."

The Arizona courts generally limit local power and authority.[3] However, in spite of constitutional and legislative measures that constrain local government authority, counties and municipalities have a measure of autonomy founded upon a strong tradition of local control and professional management. Municipalities, especially, consistently resist efforts by the state to diminish their powers.

The League of Arizona Cities and Towns recently launched a challenge that opposed HB2209, a 2008 bill that required counties, cities, and towns to make a "contribution" of $29.7 million to the state general fund. The league argued it was unconstitutional because it was a "tax, fee or assessment" benefiting the general fund that was enacted without the two-thirds supermajority in the Legislature required under Proposition 108. The league also challenged it on the grounds that it was contained in an appropriations bill but did not actually appropriate funds. Municipalities prevailed in the challenge, and while the counties did not join in the lawsuit, they also did not have to pay the assessment.[4]

Local-State Procedural Relationships

Counties, cities, and towns have created statewide voluntary organizations to represent their interests at the state Legislature, the executive, and the judiciary. These organizations also connect local governments to federal agencies, the White House Intergovernmental Affairs Office, and their respective national organizations. Most play an educational role as well, providing opportunities for professional development, research, and networking.

County governments in Arizona have created two organizations to represent their interests before the state and federal governments. The Arizona Association of Counties (AACo), established in 1968, represents all elected county officials except superior court judges. The organization seeks to advance issues with the state and federal governments, educate the public on county government, and help counties find innovative approaches to save money. A board of directors comprising elected officials representing each office and each county guides AACo. (Voters elect a governing body of three to five supervisors as well as seven constitutional officers who oversee specific departments [e.g., treasurer, assessor, and recorder] and justices of the peace.)

AACo's central mission is to develop a platform of resolutions and policy priorities for the Legislature before each session.[5] Elements of its County Government Platform include preservation of local control and opposition to unfunded mandates and cost shifts (e.g., transferring state prisoners to county jails). Each of the nine groups of elected county officials works through its affiliates to develop intergovernmental strategies and presents them to AACo's board of directors. The board strives to advance the interests of all affiliates while balancing the interests of all members who come from different geographic regions with varied issues.

Members tend to unify most easily when trying to defeat or derail legislative proposals that would hurt all counties, such as those mandating changes and programs without

funding and those that shift state costs to counties. While the biggest legislative threat to counties involves fiscal matters, AACo can and does take the legislative offensive in measures that would streamline processes embedded in law. A recent success was in getting a change to an elections procedure regarding voter identification. This change will save counties millions of dollars over the course of two election cycles. The majority of AACo's efforts, however, are defensive in nature, involving tracking the 1,100 bills out of 1,400 that might harm counties and then proceeding to educate legislators on their liabilities.[6]

The County Supervisors Association of Arizona (CSA) represents the 55 supervisors and 15 managers of all counties. For more than 30 years, CSA has served as a "non-partisan forum for officials to address important issues facing local constituents, providing a mechanism to share information and to develop a proactive state and federal policy agenda."[7]

Like AACo, CSA works through a board of directors to develop an annual legislative agenda, provide education and research, and participate in conferences and policy development with the National Association of Counties (NACo). All supervisors serve on the board of directors, and each county appoints a representative to CSA's Legislative Policy Committee, which makes policy recommendations to the full board. Like the two other local government advocacy organizations, CSA plays a big role in tracking and estimating county impacts of proposed legislation, proceeding then to educate county officials and legislators on their impacts. Elected county officials then devote a great deal of time testifying before legislative committees and otherwise talking with legislators and their staff, agency personnel, and the governor's office.

The League of Arizona Cities and Towns (LACT) is a voluntary membership made up of all 91 incorporated cities and towns. It serves as a unifying voice to promote local self-government and provide legal and technical service to members. LACT's principal activity is representing the interests of municipalities before the Legislature, striving to protect local autonomy and preserve state-shared revenues above all.

Members develop an annual legislative agenda called the Municipal Policy Statement and give testimony to legislative committees.[8] As an example, municipal officials testified against SB 1070, the "immigration" bill, describing this effort as a case of "fighting a phantom and making local governments pay for it." The controversial proposal, thus, was opposed on the grounds that it was an unfunded mandate rather than immigration reform. Of the 1,400 bills typically introduced in the Legislature, LACT tracks about half, seeking primarily to halt harmful ones. As one official describes, "the league's pro-active agenda is very limited."

The process of developing relations with legislators begins at the campaign cycle, where staff and elected officials reach out to the candidates most likely to win. Before the new session begins, the three organizations hold educational meetings with legislators. At the beginning of each session, they hold "legislative days" at the capitol, where local officials meet with legislators and host a lunch. There is a belief among local government officials

that, because primary voters tend to be more extreme, those who win election are not reflective of the views of the majority of their constituents. Local government officials conclude, therefore, that the Legislature does not represent all constituents, only those who vote in primaries. Laments one executive director, "The days when the Legislature viewed local governments as partners in creating a healthy state are gone; being a political moderate is now held in disdain."

The three advocacy organizations are united in the belief that the central obstacle undermining local-state relations is the Legislature's "all-time … low level of knowledge of local governments." According to one county official, the Legislature is like a "board of directors that doesn't know its own company." Local government officials fear that "chatter at the precinct level" is what shapes the opinions of legislators on local matters.

Many legislators apparently even wonder why counties are needed; they tend to think that the state is "all urbanized." Financing and expenditures are complicated when legislators don't understand local governments "on a grassroots level," even though all of them live in counties and most in municipalities and receive or read about local service provision on a daily basis. Part of the problem driving the lack of knowledge and understanding is the fact that 30% of the Legislature turns over every two years. In general, say officials, Republicans think of counties as "unnecessary" and municipalities as more big government that needs to be restrained and regulated. Further, legislators don't like spending, but they won't cut state services to reduce spending. Instead, they look for ways to shift costs to local governments or reduce revenue sharing. Thus, the county and local organization's advocacy goals are simple: preserve state revenue sharing, halt cost shifts, and protect local autonomy.

Local government relations with the other branches of government are less contentious. The executive and judicial branches inherently lack the capacity to impact local governments on the scale that the Legislature can. The governor's office appoints a local government liaison who briefs the governor on the local impacts of proposed legislation, and has made available some federal stimulus money granted to the governor. The effectiveness of the liaison varies, however, because that position is rarely a key position in the governor's office.

According to municipal officials, the governor's office rarely invites them to policy discussions. A recent attempt to reshape the Department of Commerce into a policy advisory group, for example, did not include a single municipal representative in discussions. Municipalities also weren't consulted when the governor removed all lottery proceeds from programs that benefit communities, such as the Local Government Assistance Fund and the Heritage Fund. However, local governments fare better in their interactions with executive agencies, especially transportation, water resources, and housing.

There is little interaction between the state judiciary and municipalities other than the court's guidelines on open meetings and public records. However, municipalities chafe at the Administrative Office of the Courts taking the majority of fees, fines, and forfeitures

collected in municipal courts and using them for statewide purposes. Counties interact on a much greater scale because they finance superior courts, justice courts, probation, and clerk of superior courts.

Local-State Fiscal Environment

Fiscal issues that relate to the allocation of public resources are at the core of intergovernmental relations in Arizona. The intergovernmental relations picture is clarified by examining total public spending in Arizona, and by looking at which government branches increases spending and receive benefits.

The U.S. Census Bureau provides fiscal year 2006 combined spending data for both state and local governments. If spending on education is removed, state expenditures in Arizona reached $11.6 billion and local government expenditures amounted to $12.2 billion. (The Census Bureau mixes K–12 and community college spending in with other local government expenditures.) Further, census data reflect total spending, not general fund spending, so federal payments are included, which especially inflate expenditures for health and welfare. When that category is removed, state spending drops to $4.5 billion and local government spending drops to $11 billion. (Local government spending on education was significantly greater than state spending in 2006: $8.9 billion to $3.1 billion, respectively). Local governments outspent state government, even with education and health and welfare expenditures removed. Table 1.2, which includes spending on health and welfare, presents these U.S. Census Bureau data.

Table 1.2: State and Local Government Expenditures-Fiscal Year 2006[9]

Service Category	State Expenditures in Millions	Share	Local Expenditures in Millions	Share
Health-Welfare	$7,142	62%	$1,310	11%
Transportation	$1,372	12%	$1,502	12%
Public Safety	$1,161	10%	$2,990	24.5%
Environment-Housing	$595	5%	$2,736	22.5%
Administration	$579	5%	$1,588	13%
Debt Service	$405	3%	$903	7.5%
Other	$346	3%	$1,159	9.5%
Totals	$11,600	100%	$12,188	100%

In the 2001 Arizona Town Hall Report, “Pieces of Power,” expenditure data for fiscal year 2000 supports the 2006 census statistics. State government accounted for 29.5% of public expenditures in Arizona, and counties and municipalities accounted for 43.5%. This represents total spending and so does not reflect what state and local taxes pay for (i.e., the general fund), but the federal government transfers a far greater sum to states than to localities (although some federal transfers pass through to local governments). Moreover, 65% of federal revenues to Arizona went to health and welfare, and 20% to education. The rest went to transportation (11%), public safety, general government, and natural resources. State government spends far more than local governments on health and welfare, but nearly two-thirds comes from federal sources.[10]

Voters have had a large role in restricting and constraining state and local government revenues and expenditures. Inspired by the voter-initiated wave of constitutional and statutory limits on expenditures and revenues with California's Proposition 13, Arizona's 1980 version placed severe restrictions on what both the state and local governments can raise and spend.

Under Title 9 of the Arizona Constitution, taxes, spending and debt are circumscribed. One such outcome of these restrictions was the creation of the secondary property tax category, which is exempt from these limitations. Thus, local governments have been forced to create new voter-approved taxing districts in order to avoid revenue and expenditure limits and fulfill their service obligations. (The 1979–80 revenue or expenditure base, upon which annual increases are determined, soon prevented local governments from raising and spending what they needed. The base was readjusted in 2006 to reflect changing service demands and revenue capacity.)

The state gives municipalities greater taxing authority than counties, principally in the sales tax; the rate is unlimited (the average is 2%) and the base is broader (e.g., food for home preparation). Counties can only impose a one-half cent sales tax, which requires a unanimous vote of the board of supervisors or a public vote, and the county sales tax base is tied to that of the state. Further, municipalities but not counties receive a portion of the income tax revenues.

Arizona returns a portion of its tax revenues to local governments, as these taxes are generated in local stores, restaurants gas stations, and commercial activities that utilize local services in the process. Through a statutory formula, counties and municipalities get a share of state revenues from the income tax (municipalities only), transaction privilege tax , gasoline tax, vehicle license tax, and, until recently, lottery proceeds. According to local government representatives, many state legislators resent sharing these tax revenues but without understanding or acknowledging that well-governed localities are what make successful commercial activities possible. (Under the 1972 initiative that created the Urban Revenue Sharing system, municipalities gave up the right to impose their own income and excise taxes.)

One recent study on the role of cities and towns in the state's economy found that municipalities contained 82% of the population and 88% of the state's jobs and produced 91.4% of gross income and 91.4% of state income taxes. They also produce 93% of transaction privilege tax (TPT) revenues. Yet, the state shares only 11% of the income tax revenues and 8.6% of TPT revenues with cities and towns. Table 1.3 illustrates these findings for five municipalities.

Table 1.3: Revenue Sharing with Five Municipalities FY 2004-2005[114]

Type/Population	TPT to State	TPT from State[12]	Income Tax to State	Income Tax from State
Rural Town: Payson/14,000	$14 million	$1.3 million	$11.3 million	$1.3 million
Rural City:	$30.2 million	$1.9 million	$18.8 million	$1.84 million

[4] Based on 2000 census figures

Kingman/21,000				
Suburban Town: Marana/15,000	$48 million	$1.3 million	$7.5 million	$1.3 million
Suburban City: Peoria/108,000	$152 million	$10 million	$112.5 million	$10 million
Metro City: Tucson/486,000	$442 million	$45 million	$520 million[5]	$45 million

Percentages of the TPT shared with these five cities and towns range from 2.7% to 10%. Percentages of the income tax shared with these jurisdictions range from 8.6% to 17%. Municipalities are clearly the economic engines of Arizona, and in order to generate tax revenues for the state, they must incur major expenditures to attract, retain, and expand businesses. The study concludes, "Basic services appear to be just as important to economic health as specific economic development services … and a strong public service foundation is necessary. It appears that Arizona's cities and towns are good investments for both the state and the business communities."[13] Unique to municipalities, and one of the reasons why their basic services are essential to economic development, is the provision of water, sewer, and fire, services that other levels of full service governments do not provide.

Many counties have urbanized areas as well, and although they do not participate in urban revenue sharing, the TPT, gasoline, and VLT shared revenues are vital to their economic health. Counties, of course, spend most of their budgets on basic services, including prosecution, defense, adjudication and probation (expenses most municipalities do not incur) as well as vast systems of roads and bridges—services essential to economic growth. They do, however, contribute to those activities that promote economic development directly, such as making cash contributions to regional organizations.

It should be clear to legislators why protecting state-shared revenues is a major policy goal for counties and municipalities. A major policy goal for counties is to prevent unfunded mandates and cost-shifts. Because counties are administrative service providers for the state as well as local and regional governments, legislators find counties easier to manipulate than municipalities. Municipal and county officials also view counties as willing to make deals with the Legislature rather than fight against bad legislation (such as joining with the League of Arizona Cities and Towns in suing to prevent enactment of HB2209 in 2008).

Providing (and also paying for) state services such as property assessment, adjudication probation, and tax collection offers a direct avenue down which to shift state costs to counties. The most notable example in 2010 concerns juvenile corrections. Counties have the primary responsibility for juvenile inmates, but the most troubled prisoners are treated at the state facility. Federal regulations regarding juvenile education, health, dental, and segregation matters make juveniles very costly to detain. In an effort to balance the fiscal year 2011 state budget, the governor proposed eliminating the state juvenile corrections

[5] Includes Oro Valley and South Tucson

center and transferring that population to county facilities, at a savings of $63 million to the state.

However, these state savings would have shifted far more in costs to counties because of the money counties would have needed to spend to upgrade inadequate county facilities and programs for substance abuse, behavioral health, and education in county jails.

Counties began an extensive program to educate themselves on juvenile justice and then used their knowledge to educate legislators (LACT partnered with counties on this effort). As a result of CSA, AACo, and LACT efforts, the governor halted the proposal and created a commission on juvenile corrections reform to study the issue for one year. The proposal could be reintroduced in 2011.

SB 1070 is another example of the propensity for legislators to shift costs to local governments. Rather than raise taxes to fund the program, the Legislature is making sheriffs and police departments carry it out. Other estimated FY 2011 state budget cost shifts to counties include taking $14.25 million from the county share of the gasoline tax and giving it to the Department of Public Safety; eliminating the county assistance fund for $7.65 million; and making Pima and Maricopa counties give the state $34.6 million, for a total hit of $78.3 million.[14]

This brief review of intergovernmental relations in Arizona, through a local government perspective, may suggest that counties, cities, and towns are not just partners with the state in providing services, but play the dominant role. A change in the state perspective on intergovernmental relations to reflect this suggestion—and the fiscal environment that underlies this observation—may benefit the entire state in the long run.

Tanis Salant has a PhD from University of Southern California in public administration. She conducted research and taught at the University of Arizona for many years until her recent retirement. The focus of her research is local government and includes county home rule, county-state relations, unfunded state mandates to county government, and county-tribal relations. She has published several book chapters, journal articles, and monographs on these subjects. She has also written about the impact of the border and immigration on county governments in the Southwest.

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[5] www.azcounties.org
[6] Nicole Stickler, executive director, Arizona Association of Counties, telephone interview August 20, 2010.
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[12] Arizona Department of Revenue 2005 Annual Report
[13] Tanis J. Salant, Alberta Charney, and Marshall J. Vest, "The Role of Arizona Cities and Towns in the State's Economy," *Arizona's Economy*, April 2007, Tucson: Economic and Business Research, Eller College of Management, The University of Arizona, p. 8.
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Tribal Governments in Arizona

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Key Points

- While the Federal government's relationship with Native American tribes is defined by the Constitution, states are generally left to define their relationship with tribes.
- Judicial rulings, federal law, and tribal treaties have kept state jurisdiction on reservations to a minimum.
- The state of Arizona has control over all criminal and some civil jurisdiction on Native American land. The state also has provided public education and voting rights to Native people in Arizona.
- State-tribal relations are ever changing and are often complicated. Jurisdictional issues vary from tribe to tribe and issue to issue and are still being debated.
- With the increase in tribal gaming revenues, the state has become increasingly connected to the various tribes in several ways. The two main tribal-state institutions are the the Arizona Commission of Indian Affairs and the Intertribal Council of Arizona
- Tribes contribute 1-8% of gaming revenues to state and local governments, creating funding for several departments and agencies.
- Tribal relations to counties and municipalities are generally good, with tribes providing funding for a variety of projects, grants, etc.
- The tribes in Arizona vary greatly in size and composition. Arizona contains three types of tribes: rural, suburban and urban and each faces unique challenges.

Introduction

Arizona has a comparatively large number of tribal governments, tribal citizens, tribal lands, and tribal political representatives. With 562 federally recognized tribes in the United States (half of those are in Alaska and more than 200 are in California), the average number of tribes per state is 11. Arizona, however, is home to 21 Indian tribes located on 20 reservations. Tribes control 26% of the state's land base—19.8 million acres—and several thousand more acres are owned off-reservation. Enrolled members comprise about 5% of the state's population and members of various tribes hold elective office in state, county and school district governments. Hundreds more hold professional positions in those agencies.

Moreover, Indian tribes routinely provide public services to their residents and enter into intergovernmental agreements to provide services jointly with city, county, and state agencies. Arizona tribes also contribute significantly to the state's economy. Since the United States approved the Indian Gaming Regulatory Act in 1988 and Arizona first entered into gaming compacts with its tribes in 1992, millions of dollars in gaming revenues have streamed into state coffers and funded community projects in counties, cities, and towns. Millions more have been donated to charitable causes and non-profit social service agencies.

Indian tribes in Arizona, thus, are firmly embedded in the political, social, and administrative life of the state. This chapter provides an overview of Arizona's Indian tribes and discusses ways in which tribal institutions are linked with those of the state and local governments—both because of and in spite of tribal sovereignty. Three of Arizona's tribes—one rural, one suburban, and one urban—are also described in detail. A glance at Arizona's Indian tribes is provided in table 1.

Sovereign or Domestic Dependent Nations?

Federally recognized Indian tribes are considered sovereign nations and protected by the Constitution, legal precedent and treaties, while Congress maintains trust responsibility. Tribal sovereignty is grounded in the fact that tribes pre-dated the formation of the United States; self-rule is at the heart of sovereignty, where tribes establish their own constitutions, by-laws, and legal codes.[1] The role of the federal government in tribal affairs is clear. Less clear are the roles of states and local governments, especially counties with reservations inside their boundaries.

The Constitution defines the relationship between the federal government and states in the 10th Amendment, but states are often left to define their own relationship with tribes. Moreover, inconsistencies in case law leave states and tribes to sort out jurisdictional issues one at a time. Article 1, Section 8 of the Constitution, provides this guidance: "The Congress shall have the power … to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Treaties, executive orders, case law, federal statutes, federal regulations, and Congressional appropriations have shaped the status of tribes in the United States. But generally states and tribes exist as mutual sovereigns, sharing contiguous geographic areas and common citizens.[2]

Judicial rulings, federal law, and tribal treaties have kept state jurisdiction on reservations to a minimum. The basic principles upon which state-tribal relations are based were delineated in early 19th century in *Worcester v. Georgia.* The ruling followed an attempt on the part of the state of Georgia to preempt federal law on the Cherokee Nation Reservation, clarifying the following:

- No state criminal or civil jurisdiction over Indians
- No taxation of Indian-owned property
- No taxation of income derived by an Indian
- Limited sales taxation on Indian merchants
- No regulation of land use
- No authority over domestic relations
- No imposing game and fish laws

Worcester v. Georgia further described tribes as "domestic dependent nations," and the case underlies tribal-state relations today.[3]

Tribes and Arizona

Federal legislation enacted in 1953 sought to end the ward status of tribes with House Concurrent Resolution No.108 and Public Law No. 83-280 (P.L. 280). These two measures asserted the need to make Native Americans "subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship."[4] Public Law 280 was ostensibly crafted to help tribes control reservation crime by granting states jurisdiction over criminal and some civil affairs. But an implicit purpose of Congress, in extending state control on reservations, was to reduce federal expenditures by replacing tribal court systems with their own courts.[5]

Congress mandated that five states become "P.L. 280 states" and assume full criminal and some civil jurisdiction on reservations. Arizona chose to come under P.L. 280, and thus undertook jurisdiction over "all Indian country within the state, limited to enforcement of the state's air and water pollution control laws."[6]

Other federal legislation in the 1950s extended the state public school system to the Navajo Reservation, which provided states with education funds for federally impacted areas. The first communities on the Navajo Reservation to benefit from these two public laws were Fort Defiance, Window Rock and Ganado. With the advent of state schools on the Navajo Reservation, the Navajos began to seek election to state school boards, a foray into non-tribal politics that led to their subsequent involvement in state and county politics.[7]

The 1965 Voting Rights Act also affected state relations with tribes by designating certain states in the Southwest to be covered by special provisions to increase minority political representation. Arizona was the only one of the Southwestern states to receive this designation. It meant that Coconino, Navajo and Apache counties had one of two courses of action to take whenever they changed their voting procedures (i.e., redrew their precinct boundaries): counties could either send proposed boundary changes to the Department of Justice for pre-clearance, or they could take the proposed changes to court seeking a declaratory judgment. Thus, disputes over Arizona redistricting would be settled at the federal level. The Section 5 designation for Arizona remains in effect and guides all boundary changes today.

Tribal-State Relations

Federal law and policy are supreme over state law with regard to tribal reservation land [Arizona Revised Statutes (ARS) const. Art. 20, Par.4; Act June 20, 1910, Para.20, 36 Stat.557.] However, Arizona Constitution Article 20, Par. 4, also states that "State laws apply on Indian reservations unless their application would impair rights granted, reserved, or protected by federal law or would interfere with tribal self-government."

Reservation lands are within political and governmental, as well as geographical, boundaries of the state and they are not immune from the reach of state governmental authority. In

becoming a P.L. 280 state with limited jurisdiction, Arizona exercises some rights in environmental and air quality.

But state jurisdiction on reservation lands is still undergoing clarification in the courts. In *United States v. Superior Court in and for Maricopa County* [144 Ariz.265, 697, P2d. 658 (1985)], the right of Arizona to adjudicate Indian claims to stream waters was affirmed. The ruling concluded that, "The state of Arizona may exercise jurisdiction in Indian country where it acts in accordance with the will of Congress and not contrary to the right of Indian self-government."[8]

The current debate over states' rights and tribal sovereignty, thus, concerns the degree of jurisdiction within reservation boundaries rather than sovereignty itself. Some of the state-tribal jurisdictional issues involve taxation, public school districting, elections, regulation, land use, transportation, rights of way, water rights, and gaming.

A lawyer in the state attorney general's office described the current status of state-tribal relations as this: "Indian law is extremely complex and the direction to take on state-tribal issues varies from tribe to tribe and the applicability of law varies from tribe to tribe depending on their own treaties and constitutions. These common jurisdictional issues are extremely fluid and under constant debate."[9]

Tribal-State Institutions

Navajos and a smattering of other tribes have been electing members to the Arizona Legislature since the 1970s. District 2 covers the Navajo and Hopi reservations. Two Navajos and one non-Native (who lives on the Hopi Reservation) are serving in the 49th House of Representatives. The election of Indians to state and county offices has not been conflict-free, however. Participation in off-reservation politics began in the 1950s and slowly gained momentum in the 1970s, with massive voter-registration drives. Apache County voters elected Navajo Tom Shirley to the board of supervisors, but the board refused to seat him. Rulings of the Arizona Supreme Court as well as a federal order to reapportion electoral districts in the county led to two of the three supervisorial seats going to Navajos.[10]

Other institutions that connect tribes and the state are:

- The Arizona Commission of Indian Affairs (ACIA), which was established by the state in 1953 to represent the interests of tribes and to moderate state-tribal affairs in developing and reaching mutual goals. Its mission is "to build partnerships to enhance intergovernmental relations, social and economic prosperity for the 21 Indian Tribes/Nations of Arizona." The commission is composed of nine members appointed by the governor, seven of whom are from tribes and two who are at large non-Indians. Nine ex-officio members include the governor and attorney general. ACIA publishes an annual directory of tribal governments, sponsors an annual Indian Town Hall, and facilitates an Indian nations and tribes legislative day at the beginning of each legislative session. Administered by an executive director appointed by the governor, the ACIA generally assists and supports state and federal agencies in helping Indians

and tribal councils to develop mutual goals and design projects that will accomplish those goals.[11]

- The Intertribal Council of Arizona (ITCA), which was created in 1952 to provide a "united voice for tribal governments … to address common issues and concerns." In 1975 ITCA incorporated as a private, non-profit entity to "promote Indian self-reliance through public policy development" and provide information vital to Indian community self-development. Its membership comprises elected officials from all tribes except the Navajo Nation and is governed by a board of directors and administered by an appointed staff of 50. ITCA operates more than 20 projects that provide technical assistance and training in planning and development, research and data collection, resource development, management, and evaluation. It sponsors forums, workshops, and conferences that are designed to facilitate tribal participation in the formulation of public policy at the federal and state levels. Programs focus on health, environmental quality, water policy, aging, workforce development, transportation, and cultural resource protection.[12]

With tribes generating substantial revenues from gaming, they have become higher priorities. In the 1990s, Arizona governors started proactively working with tribes by establishing a tribal liaison in each state agency and in the governor's office.

While ACIA fulfills an educational role, the liaisons are more involved in navigating specific policy issues. Gov. Brewer's tribal liaison, who works with each agency liaison, holds a law degree, a fact considered to be useful because the job is a "policy role in the end." Liaisons often work with the attorney general's office and tribal lawyers. Most of the interactions between tribes and state agencies involve the Department of Gaming, particularly concerning the implementation of compacts. However, liaisons in the Tourism Office and the Department of Public Safety are particularly busy as well.[13]

Tribes and the State's Economy

Economists and forecasters often overlook the economic activity of Arizona tribes.[14] Arizona and the 21 Indian tribes entered into their first gaming compacts in 1993, setting forth types of games, technical statutes, state oversight in some areas, and requiring gaming tribes to contribute 1–8% of gaming revenues to the state and local governments.

The current compact was approved by Arizona voters in 2003 and was amended in 2009. It concerns vendor licensing, wager limits, contribution schedules, and reporting requirements, among other matters. Tribes funnel gaming profits through the "AZ Benefits Fund," which distributes contributions to problem gaming, Department of Gaming, Instructional Improvement Fund, Trauma and Emergency Services Fund, Arizona Wildlife Conservation Fund, and the State Tourism Fund.

Between fiscal year 2004 and May 2010, gaming contributions totaled $537 million. Tribes are also required to contribute 12% of the "1–8%" to counties, cities, and towns. That allocation, since adoption of the second compact, has amounted to more than $56 million.[15]

Non-profits may also apply for the "12% Gaming Distribution" to individual tribes as long as they have a local government to serve as fiscal agent.

Grants are awarded to local governments either through a competitive process or by dedicating each year to a single category by individual tribes (e.g., public safety, economic development, children's programs, or education). Each tribe has its own application process and timetable, and councils make the final decision on awards. In addition, tribes also provide sponsorship of charitable causes and civic events, and individual casinos donate money to community activities. The Ak-Chin Indian Community, for example, recently donated $3.3 million to the Maricopa Unified School District to keep open an elementary school that was slated for closure.

What do tribes do with the remaining 92-99% of their net gaming revenues? They build community colleges, fund college scholarships, establish or expand fire departments and emergency management services, build libraries, purchase ambulances, fund elder programs, provide housing and utilities, and develop enterprises on and off the reservation.

Long before tribes began operating full-service casinos with live tables and shows, the tribal governments and reservation residents—both Indian and non-Indian—have by necessity spent their incomes and revenues off reservation. Studies have documented off-reservation spending habits, in part to enlighten county and city voters that Indians do contribute to state and local taxes.

In 1994, for example, Coconino County commissioned a study to determine the contribution to the state, county and municipal sales tax collections of Navajo Nation residents in the Western Agency (Tuba City). Contributions to Coconino County's one-half cent sales tax amounted to about $5 million in fiscal year 1993, and the board of supervisors then allocated $1 million for a solid waste management project in Tuba City.[16]

Tribal-County Relations

Reservation boundaries can be nestled within a single county or spread across several. Arizona's largest tribe in both population and area is the Navajo Nation, which sprawls across six counties in three states.

While reservation residents do not vote in municipal elections, they do vote for county offices and on measures. Navajos have been getting elected to county supervisor seats in Coconino, Navajo and Apache counties for decades. In fact, the Navajos control the Apache County Board of Supervisors and have elected several Navajos to other county offices as well (e.g., county school superintendent). Counties also establish county annexes on the Navajo Reservation and hire Navajos to staff it.

Intergovernmental agreements between tribes and counties are common. Road grading, elections, senior citizen services, community and health services, and vocational education are typical service areas for tribal-county cooperation.[17] County sheriffs usually play the most extensive role on the Navajo Reservation, and the construction and operation of sheriff

substations is the most expensive service provided to reservations. While tribal police are primarily responsible for enforcing laws on the reservation, jurisdiction over non-members falls to the county sheriff.

The case of Apache County illuminates typical tribal-county relations: Two-thirds of the county's population live on the reservation and thus control two-thirds of the governing board. Discussions surface occasionally about moving the county seat from St. Johns to Window Rock or constructing a domed stadium through bond financing in Ganado. But one of the two Navajo supervisors usually side with the non-Native supervisor and defeat these initiatives.

Tribal-Municipal Relations

Tribal operations can impact local economies. In the realm of economic development and local taxes, the tri-city region of Prescott, Prescott Valley and Chino Valley has experienced competition from the Yavapai-Prescott Tribe's retail center located just outside Prescott's boundaries. Though the tribe is very small, the center redirected $3 million–$4 million in tax revenues away from the tri-city region in 2003. Such competition has necessitated serious effort on the part of municipal officials to interact with various tribes.

Other examples include the Tonto Apache Tribe, contiguous to the town of Payson, which has developed commercial enterprises on its reservation that are capable of competing with businesses in town; and the Fort McDowell tribe, which developed a shopping mall on land it owns off-reservation.[18] A contemporary example pits the Tohono O'odham Nation's plans to build a casino-hotel complex on private property it owns near the city of Glendale against the wishes of the city council and some state legislators.[19]

Not all tribal-municipal interactions are competitive. The city of Mesa, for example, traded 25-acre feet of effluent for 20-acre feet of drinkable water with the Salt River Pima-Maricopa Indian Community. Another tribe-city project seeks to restore the 14-mile stretch of the Salt River bed from Granite Reef Dam to the Pima Freeway. The Gila River Indian Community provided a grant to the city of Avondale to develop and implement a video appearance system to link its city court with the city jail. The city of Globe and the San Carlos Apache Tribe entered into a cooperative strategic plan to build a mutually beneficial industrial park on both sides of the city-tribe boundary.[20]

Further, tribal leaders, who are elected, and tribal elders, who are not, routinely meet with municipal and county officials, attend swearing in ceremonies, and generally make their presence known when reservation land is close enough to municipal boundaries to be impacted by development decisions. During its explosive growth period, the recently incorporated city of Maricopa and the Ak-Chin Indian Community worked through many such issues, including cultural ones such as buried artifacts uncovered in development.

Tribal leaders also play significant roles as members of various planning agencies. The Tohono O'odham Nation and the Pascua Yaqui Tribe, for instance, each have a seat (and an equal vote) on the Pima Association of Governments (PAG) and the sales tax-supported

Regional Transportation Authority. While local governments usually do not spend transportation funds on reservation land, members of PAG were cognizant of the fact that tribal governments participate in regional affairs and also spend huge sums of money off the reservation.[21]

Governing Three Indian Tribes

Arizona's Indian tribes govern themselves through democratic institutions, public services, and constitutions, articles of association and/or tribal codes. This section will provide an overview of the governance of three tribes—one rural, one suburban, and one urban. The institutions illustrate the tools of governance used by Arizona's tribes.

Rural: Tohono O'odham Nation

The Tohono O'odham Nation (TO) is the second largest tribe in terms of area and population. The reservation covers 2.8 million acres across four separate regions, with the largest parcel comprising 2.7 million acres in southwestern Pima County. Originally called the Papago Tribe, its constitution and by-laws were first adopted and approved in 1937; a new constitution, adopted in 1986, changed the name to Tohono O'odham Nation. The TO has 28,089 enrolled members, with 13,500 residing on the reservation.

Tribal government consists of three branches: legislative, executive, and judicial, which exist "together in a system of checks and balances [that] allows the Nation to conduct business with the assurance that each branch will keep the other two in harmony."[22]

The reservation is subdivided into 11 districts, and tribal headquarters and departments are located in the district of Sells. The legislative council is made up of 22 members—two representatives from each district elected to four-year terms. The executive branch consists of a chairman and vice chairman who are elected at large every four years. The judicial branch consists of courts, four judges and one court solicitor, all appointed by the council to six-year staggered terms. Justices select a chief judge to serve for two years, and that person designates one or more judges to serve on the children's court. The judiciary also has a court of appeals. The constitution provides for referendum, initiative, removal, and recall.

The constitution also grants broad fiscal powers to the legislative council, including adopting, amending, and approving annual budgets and levying duties, fees, taxes, and assessments on any person, corporation, or association residing or doing business on the reservation. The council also has the authority to borrow money and issue revenue bonds. The chairman oversees the administration and management of the government, with authority to veto council enactments. The chair also appoints all department heads, who report to a tribal manager, called an administrative officer.

Each of the 11 districts is governed by at least 5 representatives, called the district council, elected either at large or from district villages, to 4-year terms. District councils also select a secretary and treasurer. The constitution directs the district councils to preside over "matters

of local concern, except that in any matter involving more than one district in which there is a dispute, the Tohono O'odham Council shall decide the matter." The council must approve district budgets.

Ten broad departments are organized as part of the executive branch. They include education, recreation, administrative support, membership services, health and human services, natural resources, planning and economic development, public safety, and gaming. Administrative departments employ about 1,200 people and in 2010 have an operating budget of $76.5 million.

Suburban: Ak-Chin Indian Community

The Ak-Chin Indian Community (ACIC) governs itself through Articles of Association adopted in 1961. It provides for democratic elections for a five-member council, at large for three-year terms on a staggered basis. The council serves as both the legislative and executive branches. It adopts the laws of the tribe, develops and adopts the tribal budget, and administers all departments. The tribal judiciary is an independent branch, and judges are hired by the council under contract. The council has considered drafting and adopting a constitution on several occasions, as the Articles of Association do not permit amendment, and council members are particularly interested in direct election of its chair and vice chair.[23]

The reservation is situated in western Pinal County, adjacent to the city of Maricopa. Established by President Taft in 1912 with 48,000 acres, the ACIC's land was reduced to 22,000 acres the following year. The economy is based on agriculture and commercial activity. The north-south Smith Wash provides a buffer zone that separates and preserves the rural and traditional nature of the tribe on the west side and the commercial nature on the east side. Most members live west of the Smith Wash and commercial enterprises, including Ak-Chin Harrah's Resort and Casino, are situated east of Smith Wash.

The ACIC is a full-service government transitioning to a suburban existence while preserving its rural heritage. Members live in tribal-built and -owned housing developments free of rent and utility costs. Public services include police and detention, fire and emergency services, judicial, prosecution and defense, elder center, sanitation, facilities maintenance, and pre-school and childcare. Internal departments include finance, human resources, information technology and geographic information services, capital projects, grants, and contracts, among others.

The ACIC purchased land off the reservation for an industrial park, for which it is developing a marketing plan for light industry, agriculture, and water conservation. Hickman's Egg Farm, the Southern Pines Golf Course, and a nearby airport are recent enterprises. The tribe imposes a sales tax on commercial enterprises as well as leasing fees.
Elected tribal officials state that the tribe knows what it wants for the future. They urge federal, state, county, and municipal officials to understand that the Ak-Chin, above all, is a community. Rights-of-way and road encroachment are the most important issues in preserving unity. The tribe also regularly works with officials of Pinal County and the cities

of Maricopa and Casa Grande. Membership has reached 889, with 200 members living off the reservation and another 200–300 non-members living on the reservation.

Urban: Salt River Pima-Maricopa Indian Community

The Salt River Pima-Maricopa Indian Community (SRPMIC) is Arizona's most urban tribe and embraces its location. The reservation is bordered by the cities of Scottsdale, Tempe, Mesa, and Fountain Hills.

The tribe was established by presidential executive order in 1879, making it one of Arizona's oldest federally recognized tribes. The reservation encompasses 52,600 acres. Commercial development is permitted on its western boundary called "the Pima Corridor," and agricultural enterprisesare cultivated in the middle of the reservation. A natural preserve of 19,000 acres is protected in the eastern portion. Membership has reached about 10,000 people, with 70% living on the reservation.

The SRPMIC is governed by a president and vice president, elected at large to four-year terms, and a seven-member tribal council, elected by district to four-year terms. The reservation is divided into two districts for purposes of political representation; five council members represent one district and two represent the second. The tribe is also managed by a community manager and two assistant community managers. Government departments employ about 1,600 people and operate with a budget of $140 million, adopted annually by the council.

The tribal council's responsibilities are embedded in history and culture. Its vision is to embrace "the spirit of our ancestors, elders' wisdom, and create a legacy of honor, pride and respect for our future generations."[24] Five goals frame the council's direction: protect, preserve, and sustain the land and environmental balance; embrace sovereignty; promote a spiritual, mental, emotional, and physically healthy lifestyle; make a commitment to education; and plan economic growth to secure financial security. Constitutional responsibilities include fiscal, police, and land use powers, among others.

The president and vice president and tribal management team oversee a multitude of departments that reflect full-service government. They include administration, community development, legal services, regulatory agencies, community relations, congressional and legislative affairs, corrections, education, engineering, finance, fire, health services, human resources, information technology, public works, transportation, and treasurer. The president and vice president vote on matters before the council. The judiciary is a separate branch; the chief judge is elected, and the Community Council appoints the other six to seven judges.

The vision statement for economic development exemplifies the urban nature of SRPMIC. The tribe seeks "a balancing of forces of economic development with the foundations of established community values," such as sense of community pride, vision, and destiny that are essential to the worth of any project.[25]

The SRPMIC has adopted a general plan as its blueprint for land use, development, conservation, and preservation. The western portion of the reservation is dedicated to commercial and industrial enterprises, such as Saddleback Communications, Salt River Commercial Landfill, Salt River Devco (asset management), Salt River Financial Services Institution, Salt River Gaming Enterprises (two casinos), Salt River Materials Group, and Talking Stick Golf Course.

Conclusion

The United States federal system gives recognition to the existence of multiple powers within political boundaries, and the U.S. Constitution sorts out jurisdiction among the federal, state, and tribal governments. Intergovernmental relations are structured to settle differences and disputes while respecting the sovereignty of other units or levels of government.

A look at three Arizona Indian tribes, representing rural, suburban, and urban governance, demonstrates that tribes in Arizona operate as full-service governments, the scope and resources of which depend on population, area, and location as well as tribal leadership and tribal goals. They also have extensive relations with the state and local governments. Arizona tribes are clearly governing in an era of nation-building. "Tribes are alive and functioning as governments and societies, attentive to changing needs and social circumstances, and spurred to promote economic, social, political and spiritual development of their own communities."[26]

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Elections: Process and Participation

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Key Points

- In order to run for election in Arizona, candidates must be qualified via age, citizenship and district residency; candidates usually run through a partisan primary.
- Running for office is generally a long, complicated and expensive process; campaign finance plays a major role in the success or failure of a candidate. Arizona has tried to implement campaign finance reforms via Arizona Clean Elections, but there are still issues.
- There are several sources of information about candidates in Arizona, including: the media, nonprofits, for-profits, campaign ads, government agencies and party affiliations.
- Voting in Arizona can be done two ways: by mail or in person. There are several ideas of how to increase efficiency in voting practices but each has a weakness; it seems there is no solution that is perfect for every Arizona voter.
- A high voter turnout is much more likely during general elections versus primary elections and there are several emerging ideas on how to attract and encourage voters.

Overview

This chapter summarizes the structure of Arizona's election system: who can run for office, who can vote, and how the voting process works. It also examines factors other than the legal structure that influence the conduct of elections—the role of money and other resources in determining how campaigns are run and who can participate actively; the influence of organizations such as political parties, interest groups, and the media; and the mechanics of casting and counting ballots, which have been the source of much controversy and concern since the 2000 presidential election. In each section, the chapter examines not only current practice but also alternatives that have been proposed and, in some cases, implemented in other places.

Who Can Be Elected to Office?

The Arizona Constitution prescribes the basic qualifications for potential officeholders: age, citizenship, and residency in the district from which they seek to be elected.[2] Only two public

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[1] The views expressed herein are the views of the author and not the firm or its clients.

[2] All officeholders must be qualified voters in the district in which they seek to be elected. Ariz. Const. art. VII § 15; *see also* A.R.S. §§ 38-201, 11-121. Candidates for Governor, Secretary of State, State Treasurer, and Superintendent of Public Instruction must be 25 years of age or older, a U.S. citizen for ten years, and a citizen of Arizona for 5 years preceding their election. Ariz. Const. art. V § 2. Members of the Legislature must be 25 years of age, citizens of the United States, and must have been residents of the state for three years and residents of the county for one year prior to their election. Ariz. Const. art. IV, pt. 2, § 2.

offices carry special substantive knowledge requirements: the attorney general must be licensed to practice law and the state mine inspector must have practical experience in the mining industry.[3] All potential officeholders follow the same basic process: announce their candidacy, open a campaign committee to raise and spend money to support their campaign, gather nomination petition signatures from voters who live in their district, and urge voters to support them on election day.[1]

In addition, candidates for most public offices must go through a partisan primary election in which they compete with other candidates from the same party, from which only the top one or more candidates advance to the general election to compete with nominees of other parties for the same office.[2] Candidates who are not affiliated with any political party must file nomination petitions in order to appear on the general election ballot without any party affiliation.[3]

But those are just the mechanics. The practical reality is that running for office takes time and money, as well as some skill in reaching and connecting with prospective voters.

Campaign Finance

Candidates can draw campaign funds from three sources: private, personal, and public.

Money pays for websites, signs, flyers, and mailers; television or radio advertisements; travel and event expenses to meet with potential supporters; and, for larger campaigns, campaign staff and consultants.

The need to raise that money adds to the candidates' already time-consuming work of reaching and persuading voters, and, some argue, may make officeholders beholden to those who provided funding for their campaigns. However, the increasing power of the Internet has given candidates the ability to stretch campaign dollars further; websites, online ads, and e-mails are much less expensive than television, radio, and direct mail.

Private fundraising is the longstanding, traditional method of funding campaigns. A candidate raising private funds takes contributions in limited amounts from individuals, political committees (sometimes called "PACs"), and political parties.

In the 2010 election, a candidate for governor could accept contributions of up to $840 from any individual person, with no limit on the total amount of contributions from individuals, as well as $840 from any individual political committee.[4] There is a limit on how much of a

[3] The attorney general must have been a licensed, practicing attorney for five years before taking office. A.R.S. § 41-191. The State Mine Inspector shall be 30 years of age or older, a resident of Arizona for 2 years prior to her or his election, and shall have at least seven years of mining experience. A.R.S. § 27-121.

[4] A.R.S. § 16-905; *see also* www.azsos.gov/election/2010/Info/Campaign_Contribution_Limits_2010.htm (providing current inflation-adjusted limitations). Political committees with more than 500 individual donors can give larger amounts, between 4 and 5 times as much as smaller political committees. *Id.* The Supreme Court of the United States has held that the First Amendment prohibits limiting the amount of a candidate's own

campaign can be financed by political committees and parties (as opposed to individuals). For example, in 2010, the limit on political committee and party contributions to a candidate for governor is $83,448.

Candidates can also use unlimited amounts of their own money and accept unlimited contributions from members of their immediate families.[4]

In 1998, Arizona voters approved a ballot measure providing a third financial option for candidates running for statewide office and the Legislature.[5] Those candidates may receive public funding if they:

- Substantially reduce the amount of their private fundraising.
- Accept contributions only from individuals, not political committees or parties.
- Collect small $5 contributions from a minimum number of prospective constituents to demonstrate the seriousness of their campaign and the existence of some support among voters.[5]

The basic public funding amount available to a candidate for governor in 2010 is $707,447 for the primary election and $1,061,171 for the general election.[6] Legislative candidates in the same election were eligible for $14,319 in primary election money and $21,479 in general election funds.[7] Privately financed candidates sometimes raise and spend greater amounts.[8]

Until 2010, publicly funded candidates could receive additional money if the level of financial support for their opponents (through contributions or independent expenditures) exceeded the basic public funding amount; those "matching funds" were challenged in court and have been suspended pending the outcome of a constitutional challenge currently before the U.S. Supreme Court.[9]

Arizona's public financing system was created to address concerns that private fundraising reduces voter participation, discourages qualified candidates, and increases the influence of special interest groups who seek to influence government action by funding the campaigns of candidates who will vote on issues affecting those groups.[10]

Critics of the public financing system say that it has not achieved its goals of encouraging ordinary citizens to run for office or decreasing the advantage of incumbents; that it has contributed to the rise of more ideologically extreme officeholders; that it is an improper use of public funds; and that its restrictions on candidate conduct chill freedom of speech.[11]

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money that she or he can spend on a campaign. *See Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976); *Davis v. F.E.C.*, 128 S.Ct. 2759, 2771 (2008).

[5] Proposition 200, codified at A.R.S. § 16-940 *et seq.* The City of Tucson has a similar public financing program available for City Council candidates. *See* CITY OF TUCSON, CANDIDATE INFORMATION PAMPHLET (2009), *available at* cms3.tucsonaz.gov/files/clerks/pdf/2009CandidatePamphlet.pdf.

In addition to money raised and spent by candidates, other people who are interested in elections can spend money to try to influence election results. Expenditures made directly to support a candidate—such as placing an advertisement or sending a mailer—that are prepared and distributed without coordinating with the candidate are not subject to the same limitations as direct campaign contributions.[12] Interested individuals and groups can spend unlimited amounts of money on these independent expenditures.

As of January 2010, because of a U.S. Supreme Court decision, corporations and unions (which cannot give money directly to Arizona candidates) can also spend unlimited amounts on these direct election-related communications.[13] Spending on ballot measure campaigns is also unlimited.[14]

Only a few groups are forbidden from spending money to influence elections. Charitable organizations that take tax-exempt contributions are forbidden by tax law from using the money they raise to influence candidate elections.[15] Foreign nationals—non-U.S. citizens who are not lawful permanent residents—cannot make political contributions for either candidate or ballot measure elections.[16] Registered lobbyists cannot make or solicit contributions to the reelection campaigns of the governor or legislators while legislation is pending.[17] And Arizona law prohibits various public bodies—counties, cities, and K-20 public schools—from using their resources to influence voters in either candidate or ballot measure elections.[18]

Along with money and time, candidates need to have some knowledge of the mechanics and strategy of campaigns—how to most effectively reach voters, communicate their positions, and convince voters that they are the best choice. Candidates with enough funding can also hire paid consultants to help with campaign strategy, communications, and polling to test messages. Many candidates get their start working on the campaigns of others or for political parties, learning the ropes from more experienced staffers and volunteers. Some private groups have begun holding free training sessions to teach like-minded individuals how to become effective campaigners.[6]

Lastly, officeholding itself comes with opportunity costs. Once elected, officeholders may not have time to maintain other paying jobs (and some officeholders are forbidden from engaging in outside businesses), and they may take a pay cut in order to serve the public. For example, members of the part-time Legislature are paid only $24,000 per year, plus a daily stipend of $35 or $60 while engaged in legislative business.[7] The full schedule of substantive

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[6] For example, the Center for Progressive Leadership (candidate.progressiveleadership.org/candidate.php/application/program/az) and the American Majority (americanmajority.org/events/phoenix-az-candidate-training/) have recently held trainings for potential candidates and activists in Arizona, providing information on campaign mechanics and strategy to people interested in running for office or working on campaigns.

[7] The stipend for Maricopa County residents is $35; residents of other counties receive $60 per day. *See* A.R.S. §§ 41-1103, 41-1904(D); *Proposition 300*, ARIZONA SECRETARY OF STATE, 2008 PUBLICITY PAMPHLET (2008), *available at* http://www.azsos.gov/election/2008/info/PubPamphlet/english/Prop300.htm; *see also* Heather Perkins, *State Government Compensation by Branch* (The Council of State Governments July 1, 2009), *available at* knowledgecenter.csg.org/drupal/system/files/TIA_FF_StateCompensation_final.pdf.

work during a legislative session makes it difficult to hold another job while the Legislature is in session. Increases in legislative pay have been proposed, but no such proposal has passed since 1998.[19]

Who Can Vote?

In order to register to vote in an Arizona election, an individual must:

- Be a citizen of the United States
- Be 18 years of age as of the date of the next general election
- Have been a resident of the state for 29 days prior to the next election
- Not have been convicted of treason or any felony, unless his or her civil rights have been restored
- Not have been pronounced incompetent by a court.[8]

All voters may vote in the general election; party primary elections are limited to registered members of that party or, in some instances, voters who have registered as independent or no party preference (who may choose one party's primary in which to vote).[9]

Voter registrations remain valid for multiple elections.[20] Voter registration forms must be supplied free of charge by various county and local government officials, and the Arizona Motor Vehicle Division must also permit anyone applying for a driver's license to register to vote at the same time.[21] Voters can register online, by mail, or in person.[10]

In 2004, Arizona voters approved a ballot measure requiring all voters to prove their U.S. citizenship at the time they register to vote.[22] In order to satisfy this requirement, the voter must provide either the number of a valid Arizona driver's license or identification card issued after October 1, 1996, or copies of certain identifying documents (such as a birth certificate or passport).[11] Voters who registered prior to 2004 and need to change their name, address, or party registration are not required to prove their citizenship unless they move between counties.[23]

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[8] A.R.S. § 16-101; *see also* Ariz. Const. art. VII § 2. Special provisions are made for homeless persons or persons who reside in the state but do not have a fixed address. A.R.S. § 16-121.

[9] A.R.S. § 16-542(A). The Libertarian Party has obtained a federal court order barring persons not registered as Libertarians from voting in its party primary.

[10] Only those who can satisfy the citizenship proof requirement through a Driver's license number can register online. For comprehensive registration instructions, see www.azsos.gov/election/How_to_register.htm.

[11] In addition to passports and birth certificates, certain identifying numbers found on naturalization documents or tribal documents are permitted to satisfy this requirement. A.R.S. § 16-166(F).

Not all jurisdictions limit voting to citizens. Some permit non-citizen residents to vote in particular elections—such as school district elections.[24] In addition, the ability to vote in certain special districts is based on some other attribute, as in the case of special taxing districts whose voters are those who own the property taxed by the special district.[25]

What Information Is Available to Voters?

Candidate campaigns are a major source of information for voters, as are the independent expenditures of political committees, parties, and non-profit, corporate, and union entities. All campaign expenditures and contributions must be reported, and all campaign-related advertisements must have disclaimers saying who paid for them.[26] These provisions are designed to give voters information about who is speaking for or against a candidate. However, if an organization gathers money from donors and then gives a contribution in its own name, it can be difficult for voters to trace the original source of the funds.

In addition to communications expressly encouraging a vote for a particular candidate, non-profit and for-profit organizations may also distribute information about issues relevant to elections or publish candidates' responses to surveys about their views.[12] Media sources also report public information about candidates, both in the form of ongoing campaign news coverage and in survey responses or editorial board endorsements.

Government agencies also provide information about candidates and ballot measures to the general public. The Citizens Clean Elections Commission sponsors debates in every race in which there is a publicly funded candidate. The commission also mails a pamphlet to every household of registered voters with self-submitted photos and statements from all candidates running for statewide or legislative office, whether or not those candidates are using public financing.[27] The Arizona secretary of state mails a pamphlet to every household of registered voters with information about pending ballot measures and the evaluations.[28] The same pamphlet also includes performance evaluations, completed by a commission of lawyers and members of the public, of every judge who is on the ballot for retention.[29]

Political party affiliation is another source of information for voters. Some voters use political party affiliation as an indicator of a candidate's views on issues, or they vote a straight ticket for all the nominees of a particular party.

An increasing number of voters are registering as "independent" or "no party preference," indicating a lack of affiliation with a single political party. As of August 2010, almost 31% of all registered Arizona voters were registered independents.[30] Nonetheless, candidates for almost all public offices are given the opportunity to list their party affiliation on the general election ballot by competing in a partisan primary election. And political parties themselves

[12] For example, the Center for Arizona's Future developed a list of citizen questions on a range of issues through polls, forums, and online submissions, and posted both the questions and candidate responses on its website. *See* www.TheArizonaWeWant.org. The League of Women Voters publishes a guide to ballot measures with a short summary of the measure and information about supporters and opponents. *See* http://www.vote411.org/home.php

promote candidates nominated by their party to members, using volunteer efforts and political advertisements.

How are Votes Cast and Counted?

Arizona voters can cast ballots in three ways: by mail, at an early voting site, or in person on Election Day.[31] Each option has costs and benefits.

Voting by mail is easier to schedule around work, family, and other commitments. The voter can request the ballot in advance and fill it out at her leisure, with access to online and written materials about the candidates and ballot measures on which she is voting. The county recorders pay the cost of mailing the ballots back to be counted, so there is no additional cost for the voter.[32] And a voter who waits until the last minute can still cast a ballot on Election Day (subject to a confirmation she did not vote by mail also) or can submit her ballot at any polling place in her county.

Some states permit mail balloting only to those voters who are unable to be in the state on Election Day. Arizona has no such requirement. In fact, Arizona voters can ask to be placed on a permanent early voter list to receive a mail-in ballot in every election; they will receive a postcard every two years reminding them that they are on the list (and checking for returned mail indicating the voter no longer lives at that address).[33] Voters can also appear in person at a limited number of in-person early voting sites and cast a ballot before Election Day.[34]

One state, Oregon, has switched to entirely mail-in balloting, which supporters say has saved substantial public money.[35] Opponents of mail-in ballots cite security issues and concerns about voters who cast ballots too early to consider information that becomes available right before an election.[36]

Voting in person is considered by some people to be the quintessential civic experience—physically going to a public place, with other citizens, to cast a ballot in a manifestation of our democratic right to participate in selecting our government officials. Some people oppose mail-in voting—or will not use it—because they see voting in person as the most meaningful and symbolic way to exercise their rights as citizens.[37] Others believe that their mail-in ballots may not be counted—particularly if they are received late in the process and the result of the election is already clear after the in-person votes are counted on Election Day.[13] However, those who remember the gubernatorial election of 2002, among others, can attest that elections are sometimes so close that every last ballot needs to be counted in order to know who won.

But voting in person takes more time, and has to be done on Election Day, which is always a weekday.[38] Employers are only required to release employees to vote if the employee's work hours cover more than 10 of the 13 hours that polling places are open on Election Day.[39]

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[13] All ballots received and verified as validly cast are actually counted, though the counting of mail-in ballots received just prior to the election, along with other ballots that require verification, can take several days or even weeks after the election. *See* ELECTIONS PROCEDURES MANUAL, *supra*.

Voters also must vote at the polling place for the precinct in which they live, which may require them to return from work or school.[40]

Arizona polling places are open 6 a.m.–7 p.m. on Election Day, and everyone who is in line at 7 p.m. may stay and vote, even if that takes additional time after 7 p.m.[41] But lines are more likely to be long early in the morning, during the lunch hour, and after business hours, raising concerns that voters will become discouraged and go home. Some advocates suggest extending elections from one day to multiple days, holding elections on weekends, or making Election Day a holiday.

In 2004, Arizona voters added an additional requirement for in-person voting: that a voter present identification establishing that he or she is the person listed on the voter rolls in order to cast a ballot.[42] Unlike the identification required for registration, the voter identification does not need to establish citizenship—just identity. Acceptable forms of identification include government issued identification, mail sent to voters, and documents such as bank or utility statements. Voters who forget their identification can come back the same day to show it at the polling place or go to a special location within the next few days to show identification.[43]

Supporters of the measure say that it discourages and prevents voter fraud and that the variety of acceptable forms of identification makes compliance simple. Critics of this requirement say that there is no evidence of a voter fraud problem and that the requirement discourages and confuses voters and can be particularly burdensome for vulnerable or disenfranchised groups of voters, such as lower-income voters who may move more frequently and may not have driver's licenses or update them every time they move.

Both mail-in ballots and ballots cast on Election Day are subject to strict security measures that attempt to control unauthorized access or ballot manipulation. These measures include locks, requirements that multiple election officials participate or observe counting and transfers of ballots, and provisions for observers nominated by political parties to watch polling place operations and counting procedures.

Arizona uses a form of ballots recognized by many election experts as one of the most error- and tamper-proof methods—the optical scan ballot.[14] On an optical scan ballot, the voter uses a pen to fill in the middle section of an arrow pointing to her selection.[44] The voter does not need to punch any holes (leading to the famous partially punched or "hanging" chads at issue in the Florida recount in 2000), and the voter herself creates the paper record of her choices (unlike the paper receipts generated by the software of touch-screen voting machines).

Completed ballots are fed into a machine that reads the arrows, sounds an alarm if any sections have been left blank or overvoted (so the voter has an opportunity to correct errors), and then deposits the ballots into a locked box below the machine.[45] If there is a concern about the accuracy of the count, the physical ballots can be fed through another machine for

[14] *Id.* Touch-screen voting machines are available as an option for disabled persons who wish to use those machines rather than obtaining assistance in completing an optical scan ballot. *Id.* No voter is required to use touch-screen voting machines. *Id.*

comparison or even counted by hand, thereby providing a way to check for software errors.[46] Nonetheless, many voters are concerned that any system can be manipulated somehow if the stakes are sufficiently high. In addition, many voters do not have a detailed understanding of election procedures, which can also foster suspicion.

If the results of an election are very close—for example, within 50 votes in a legislative race—then the ballots will be automatically recounted.[47] Any voter may also challenge the outcome of an election in court on the grounds of official misconduct, illegal votes, or miscounting of votes.[48]

The U.S. Department of Justice's Voting Rights Division monitors election conduct and enforces the federal Voting Rights Act, protecting voters' rights to register, obtain, and cast a ballot. Arizona is one of a group of states that is subject to special scrutiny under the Voting Rights Act and is required to submit any proposed changes to election laws or procedures to the Department of Justice for review to ensure they don't disenfranchise voters.[49]

Do People Actually Turn Out to Vote?

As of August 2010, there are 3.1 million registered voters in Arizona.[50] They are substantially more likely to vote in general than in primary elections. For example, in the 2008 general election, 77.69% of registered voters cast a ballot, while only 22.8% cast a ballot in the 2008 primary.[51] In the 2010 primary election, turnout was approximately 25.76%.[52]

There are many proposals to increase voter participation and turnout, including encouraging different candidates to run for office, changing how campaign financing works, and adjusting the process or timing of casting ballots.

Some proposals focus on changing the role that political parties play in elections. For example, instead of using party primaries to select candidates to advance to the general election, it is possible to have a primary election for all interested candidates and then send the top few candidates to the primary election, regardless of their party affiliation. California adopted this primary method by popular vote in June 2010, and its effects on voter engagement and turnout will be watched closely over the next few years.[53] Others advocate nonpartisan elections, such as those now required for all Arizona cities, which they contend return the voters' focus to candidates' positions on issues.[15]

Other proposals focus on changing how votes are counted, in the hope of making voters feel that their votes would be more effective. Most elections in the United States, and in Arizona, involve one- or two-member districts in which the person or two who get the most votes is the candidate who wins. Functionally, this means that a group of voters (of a particular party, ideology, or cultural group) that are fewer than half the voters in a district will have a very difficult time electing a representative the group prefers—even if that group is a substantial minority in the district.

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[15] A.R.S. § 9-821.01. This law has been challenged in court by the City of Tucson, which has previously conducted partisan city council elections.

One idea that is popular among academics but has been used in only a few local jurisdictions is "cumulative voting," in which each voter can cast multiple ballots. In a cumulative voting system, if there were five seats on a council, the voter would be able to cast five votes. The voter could spread those votes among multiple candidates, or cast all five for a single candidate, thereby expressing preferences and the strength of those preferences.

This system gives underrepresented groups a higher chance of electing at least one representative of their choice. If the members of the group vote similarly and express a strong preference for their chosen candidate, then even a smaller group can get at least one person elected. In addition, voters' preferences and coalitions can change from election to election, a flexibility not available when officials try to draw district lines so that members of a group can be in a district together.

Another possibility is "instant runoff" or "preference voting," in which voters are asked to rank all of the candidates who are running for a particular office. Votes are then counted in an attempt to maximize all of a voter's preferences; if a voter has ranked someone first who is clearly not going to get enough votes to be elected, then that person's second choice can be counted instead. This system permits voters to vote their true preferences without concern about "wasting" votes, while also considering a more complex set of voter's preferences about candidates other than their first-choice candidate.

Any of these proposals would seem very foreign to voters used to casting a single vote for one candidate from the group nominated by the recognized political parties. The unfamiliarity of these systems has been a source of confusion and resistance in the communities where they have been attempted. However, there is also evidence that these systems do diversify the representatives who are elected and increase voter's perception that they affected the outcome of elections.[54]

Additional Resources for Further Exploration

Arizona's Election Laws

- The full text of Arizona's election laws are available through the Arizona Legislature's website (www.azleg.gov/ArizonaRevisedStatutes.asp) or in a pamphlet form from the Arizona secretary of state. Some portions of the election laws are also available on the secretary of state's website: campaign contribution laws (www.azsos.gov/cfs/Campaign_Contributions.pdf) and laws governing the initiative and referendum process (www.azsos.gov/election/IRR/Initiative_Referendum_and_Recall.pdf). The secretary of state's website also includes resources for candidates to use in registering campaign committees and gathering nomination petitions.

- Arizona's *Elections Procedures Manual*, which specifies exact election procedures in detail, is also available at www.azsos.gov/election/Electronic_Voting_System/.

- The Citizens Clean Election Commission oversees public financing available for statewide and legislative candidates. Its website,

http://www.azcleanelections.gov/home.aspx, contains guides for participating candidates that describe the public financing system in detail. Its website also contains video files of commission-sponsored debates for each office for which funding is available.

Reports and Information Maintained by Government Agencies About Election Procedures

Various government agencies, commissions, and organizations study and gather information about elections, and can be good sources of information:

- The Federal Commission on Election Reform (sometimes called the Carter-Baker Commission) was charged with examining the conduct of elections and possible reforms, with a particular focus on increasing public confidence in elections. Its full report, with all 87 of the commission's recommendations, is available online at www1.american.edu/ia/cfer.

- The U.S. Election Assistance Commission serves as a clearinghouse of information about elections procedures, at www.eac.gov/default.aspx.

- The National Conference of State Legislatures provides research on policy issues and a forum for the exchange of ideas between policymakers in different states. Their collected information about elections is available at www.ncsl.org/LegislaturesElections/tabid/746/Default.aspx.

Information About Campaign Fundraising and Spending:

- The Arizona secretary of state maintains a searchable database of reports showing funds raised and spent by all political committees, including candidate committees, ballot measure committees, and other groups organized to support or oppose candidates and ballot measures. The database is available at http://www.azsos.gov/cfs/CandidateSummarySearch.aspx.

- The Federal Election Commission maintains a similar website for federal election-related monies, including interactive maps showing campaign finance activities in different states, at www.fec.gov.

- The Center for Responsive Government uses publicly filed information to create its own searchable database of federal campaign spending, which can be searched by donor name and even by zip code: http://www.opensecrets.org/. Its website also includes information about lobbying expenditures and officeholder financial disclosures.

- The Internal Revenue Service website has information about what nonprofit organizations can do to influence elections: www.irs.gov/charities/article/0,,id=141538,00.html. The IRS also maintains a database with information about the activities of nonprofit organizations that are organized for the primary purpose of influencing elections (called "section 527 organizations"): http://www.irs.gov/charities/political/article/0,,id=109644,00.html.

Historical Archive of Past Election Information

The secretary of state's website also includes archives of the pamphlets distributed to voters with information about ballot measures, along with information about the actual votes cast in candidate and ballot measure elections, organized by election year: http://www.azsos.gov/election/PreviousYears.htm.

Additional Academic and Non-Profit Resources

The conduct of elections is a topic of fascination for many academics, as well as non-profits whose missions include changing elections or informing voters about their rights. Some Internet resources worth exploring include:

- *The League of Women Voters Education Fund*, which distributes comprehensive, nonpartisan information about the voting process and pending ballot issues: http://www.vote411.org/home.php.

- The websites of various organizations that evaluate and/or advocate specific election reforms, such as the American Enterprise Institute (http://www.aei.org/ra/36); the Brennan Center for Justice (www.brennancenter.org/); the Cato Institute (www.cato.org/government-politics); the Center for Voting and Democracy (www.fairvote.org); and the Pew Center on the States (www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=34044).

- The blog of Loyola Law Professor Richard Hasen (electionlawblog.org/), which tracks developments in election law nationwide, and "State of Elections" a new project of the Election Law Society at William & Mary Law School, which focuses particularly on state election issues (stateofelections.com/).

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[1] A.R.S. § 16-301 *et seq.*
[2] A.R.S. § 16-301 *et seq.*
[3] A.R.S. § 16-341.
[4] A.R.S. §§ 16-905(N) (permitting unlimited use of "personal monies"); 16-901(18) (defining "personal monies" to include the candidate's own assets and "family contributions"); 16-901 (10) (defining "family

contributions" as those received from the candidate's parent, grandparent, spouse, child or sibling, or the parent or spouse of any of those people).

[5] A.R.S. §§ 16-941, 16-945, 16-946, 16-950.

[6] CITIZENS CLEAN ELECTIONS COMMISSION, PARTICIPATING CANDIDATE GUIDE, 2009-2010 ELECTION CYCLE at i (2009).

[7] CITIZENS CLEAN ELECTIONS COMMISSION, PARTICIPATING CANDIDATE GUIDE, 2009-2010 ELECTION CYCLE (2009).

[8] Information about the amounts raised and spent by statewide and legislative candidates is available in a searchable database maintained by the Arizona Secretary of State at http://www.azsos.gov/cfs/CandidateSummarySearch.aspx.

[9] A.R.S. § 16-952; Order, *McComish v. Bennett* (S.Ct. June 8, 2010).

[10] A.R.S. § 16-940.

[11] *See, e.g.*, Allison R. Hayward, *Campaign Promises: A Six-Year Review of Arizona's Experiment with Taxpayer-Financed Campaigns* (Goldwater Institute Policy Report Mar. 28, 2006), *available at* www.goldwaterinstitute.org/Common/Files/Multimedia/935.pdf; UNITED STATES GENERAL ACCOUNTING OFFICE, EARLY EXPERIENCES OF TWO STATES THAT OFFER FULL PUBLIC FINANCING FOR POLITICAL CANDIDATES, GAO-03-453, (May 2003), *available at* www.gao.gov/new.items/d03453.pdf; Laura Renz, *Do "Clean Election" Laws Increase Women in State Legislatures?* (Center for Competitive Politics, August 2008), *available at* www.campaignfreedom.org/docLib/20080826_Issue_Analysis_3.pdf.

[12] A.R.S. §§ 16-905 (setting limits on campaign contributions); 16-901(5)(b)(vi) (defining "contributions" to not include "independent expenditures"); 16-901(14) (defining "independent expenditures" as advocacy for or against a candidate made without coordination with or suggestion by the candidate).

[13] *Id.*; *see also Citizens United v. F.E.C.*, 130 S.Ct. 876, 913-14 (2010); A.R.S. § 16-914.02.

[14] A.R.S. § 16-905.

[15] 26 U.S.C. § 501(c)(3); *see also* 26 C.F.R. § 1.527-6(g).

[16] 2 U.S.C. § 441e.

[17] A.R.S. § 41-1234.01.

[18] A.R.S. §§ 15-511, 15-1408, 15-1633.

[19] *Id.*

[20] A.R.S. § 16-120.

[21] A.R.S. §§ 16-131, 16-140, 16-112.

[22] *Proposition* 200, Arizona Secretary of State, 2004 Publicity Pamphlet (2004), *available at* www.azsos.gov/election/2004/Info/PubPamphlet/english/prop200.htm; A.R.S. § 16-166(F).

[23] A.R.S. § 16-166(G).

[24] DENNIS F. THOMPSON, JUST ELECTIONS: CREATING A FAIT ELECTORAL PROCESS IN THE UNITED STATES 27 (2002)

[25] *See* A.R.S. § 48-305 (weed districts), 48-404(D) (pest control districts); 48-1508 (power districts); 48-1713 (electrical districts).

[26] A.R.S. §§ 16-912, 16-912.01, 16-913, 16-914.01, 16-915, 16-917.

[27] A.R.S. § 16-956(A)(1), (2).

[28] A.R.S. § 18-123.

[29] *Id*.

[30] *See* Voter Registration Counts, *available at* www.azsos.gov/election/voterreg/2010-08-09.pdf.

[31] A.R.S § 16-541 *et seq.*; A.R.S. § 16-561 *et seq.*; *see also* ARIZONA SECRETARY OF STATE, ELECTIONS PROCEDURES MANUAL, *available at* www.azsos.gov/election/Electronic_Voting_System/2010/Manual.pdf.

[32] ELECTIONS PROCEDURES MANUAL, *supra.*

[33] A.R.S. § 16-544.

[34] ELECTIONS PROCEDURES MANUAL, *supra*.

[35] *See* Elections Division, *A Brief History of Vote by Mail*, *available at* http://www.sos.state.or.us/elections/vbm/history.html. Arizona permits mail-only elections for special districts. A.R.S. § 16-558.01.

[36] THOMPSON, *supra*, at 34-35.

[37] *Id.*

[38] A.R.S. §§ 16-204, 16-206, 16-211.

[39] A.R.S. § 16-402 (requiring release of employee whose work hours do not leave three consecutive hours for voting at either the beginning or ending of the voting day).
[40] ELECTIONS PROCEDURES MANUAL, *supra*.
[41] *Id.*
[42] *Proposition 200*, ARIZONA SECRETARY OF STATE, 2004 PUBLICITY PAMPHLET (2004), *available at* www.azsos.gov/election/2004/Info/PubPamphlet/english/prop200.htm; A.R.S. § 16-579.
[43] ELECTIONS PROCEDURES MANUAL, *supra*.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] A.R.S. § 16-661 *et seq.*
[48] A.R.S. § 16-671 *et seq.*
[49] For information about the Voting Rights Act and U.S. Department of Justice enforcement and monitoring, see www.justice.gov/crt/voting/.
[50] *See* State of Arizona Registration Report, *available at* www.azsos.gov/election/voterreg/Active_Voter_Count.pdf.
[51] *See* State of Arizona Official Canvass, 2008 General Election, *available at* www.azsos.gov/election/2008/General/Canvass2008GE.pdf; State of Arizona Official Canvass, 2008 Primary Election, *available at* www.azsos.gov/election/2008/Primary/Canvass2008PE.pdf.
[52] *See* results.enr.clarityelections.com/AZ/19539/32173/en/summary.html.
[53] *Proposition 14*, CALIFORNIA SECRETARY OF STATE, OFFICIAL VOTER INFORMATION GUIDE, JUNE 8, 2010 PRIMARY ELECTION (2008), *available at* voterguide.sos.ca.gov/past/2010/primary/propositions/14/.
[54] For a detailed description of these alternative voting systems and the studies of their implementation, see SAMUEL ISSACHAROFF, PAMELA S. KARLAN, & RICHARD H. PILDES, THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS 1128-1207(3rd ed., Foundation Press 2007).

Conclusions

Summary of Background Papers

The chapters in this background report describe how the institutions of our Arizona government operate and how they influence lawmakers and citizens. Each chapter provides a detailed account of the inner workings of these institutions as well as the author's outlook for the future of Arizona government. What follows is a summary of each article and how it relates to the rest of the background report.

This report began with Edella Schlager's article on why institutions matter and how they influence the citizens of this state and country. Dr. Schlager provides an introduction to how institutions work and why they are important to study. She provides an overview of how American institutions were developed dating back to the *Federalist Papers*, which builds a framework for how our institutions function today. Issues that James Madison, Alexander Hamilton, and John Jay wrestled with in the *Federalist Papers* are still wrestled with today. How to protect citizens from a tyrannical majority while still maintaining individual liberties, and the influence of self-interest in these institutions are both concerns today much like 200 years ago.

Human nature has always been at the center of the debate regarding institutions, and Dr. Schlager provides an excellent narrative to describe how it affects individual citizens. Like several other authors, particularly Ken Strobeck and Kim Demarchi, Schlager discusses Arizona's Clean Elections law and the controversy surrounding it. She focuses again on how this law influences individuals, while Strobeck and Demarchi focus on how it influences the Legislature and the election process, respectively.

Finally, Schlager discusses reforming our institutional system. She says that there are unforeseen consequences when change happens and most of the time these changes cause some turmoil. She does not say that there should not be any reform; however, we should treat our institutions like experiments and be able to learn from our mistakes.

The logical first step with reviewing institutions is to look at the origin. Just as the U.S. Constitution is the legal foundation for the nation, Arizona's Constitution is the law of the land. From establishing the state's boundaries to delineating each branch of state government, the constitution has provided a framework for our entire way of life in Arizona.

Professor Paul Bender gives an excellent overview of the Arizona Constitution and he provides the introductory background for what many of the other authors in this volume have written their articles exclusively on. Examples include the Legislature and its salaries from Strobeck's article; the election process and how initiatives get on the ballot from Demarchi's article; and how the judiciary interprets the laws, which is discussed at length in Paul Julien's article. Bender's chapter on the constitution provides the backdrop while the other authors have defined the specifics. Professor Bender discusses the major aspects of the Arizona Constitution. Questions like what do to when the U.S. Constitution overlaps with the Arizona Constitution, and who can initiate a recall election or ballot initiative, are all discussed in this article.

Arizona's Constitution states that "all political power is inherent in the people," and this is shown in the initiative process. The people can influence what happens in the state by collecting signatures and allowing citizens to vote on an initiative. The constitution protects the rights of individuals, which goes back to Schlager's article and the discussion of protection against tyranny. The preamble of Arizona's Constitution provides for exactly that.

Professor Bender offers a description of how the constitution has been altered—130 amendments since statehood in 1912—as well as the consequences of those changes. For example, originally the Legislature and governor had no power to alter the outcomes of ballot initiatives, but now that only applies when a majority of the registered voters have voted on the initiative.

Bender also discusses how to change the process of election for members of the executive branch. He describes changing the system to having those positions that are not as high profile—mine inspector and superintendent of public education—appointed by the governor instead of elected through general elections and how this will affect citizens. Like Julien, Bender also discusses the creation of the merit-selection system for the judiciary and the breakdown of the different court structures. Finally, Bender, like many of our other authors, looks to what lies ahead for the Arizona Constitution. He poses relevant questions regarding multiple topics from reforming ballot initiatives to term limits and legislative salaries, all with an eye on what the future will hold.

The first branch outlined in the Arizona Constitution, in Article 4, is the Legislature. The Arizona legislative system is a complicated structure that is explicitly explained by Ken Strobeck in his article. He outlines the definition of legislative districts, explains why they exist, provides valuable information on candidate eligibility and finally discusses the effects of political polarization on the Legislature and state. Strobeck explains the concept of a part-time citizen legislature and explores its consequences.

Like Schlager and Demarchi, Strobeck highlights the pros and cons of Arizona's Clean Elections law in regard to the legislative branch and discusses the debate about its effectiveness. He also provides a discussion of legislative districts, their controversies and Arizona's mechanism for mapping and drawing districts. In particular, discussion focuses on the issue in Arizona of "safe districts," those that have elections that are not competitive election after election. Districts are created based on Census data, and for the 2010 redistricting, an independent agency is overseeing the creation of legislative districts in the hopes that "safe districts" will be less so. Strobeck ends his article with an exploration of the affect of an increase in political polarization in Arizona, including possible reforms.

While the Legislature implements Arizona law, the executive branch enforces it. The relationship between these two branches is closely linked and each depends on one another to serve the citizenry. Professor David Berman offers an overview of the Arizona executive system. Just as Strobeck and Julien provided outlines of the Legislature and judicial systems, Berman gives the reader background of the executive as well as what is on the horizon. There are 11 elected officials in the Arizona executive branch, from the governor down to 5 corporation commissioners. These offices are independently elected and therefore have responsibilities and are accountable to the voters. Professor Berman also discusses how some of these offices—and

the individuals that hold them—have an immense amount of power. This power allows these officials an opportunity to influence individuals and the political system as a whole.

Berman also provides a discussion of the different levels of authority that come with an executive position. For example, the mine inspector is one of the 11 elected officials, but few people know his or her name. This anonymity reduces the level of authority in these offices. While mine inspector may be a relatively invisible office, the more visible the office, the more authority it holds. The governor and the attorney general are prime examples of this.

Professor Berman brings to light one power of the governor that has been in the news recently: the special session. Governor's can call the Legislature into special session, which can be cumbersome for a citizen legislature, as Ken Strobeck discusses. The most recent special sessions were on passing the budget and the deficits the state was confronting. Another power that Berman discusses is the power the governor has to introduce or veto legislation, specifically the line-item veto. This is one of the most powerful tools an executive has at his or her disposal, and even the threat of a veto can change the entire political environment.

As many of the other authors have done, Professor Berman gives the reader a look into the future of the Arizona executive and how that affects citizens by looking at Arizona Proposition 111, which is on the November 2010 ballot. This initiative proposes changing the way many of the 11 offices are chosen; as discussed by Bender, the proposition calls for changing from general elections for lower profile offices to political appointments by the governor. The consequences of these changes can be drastic, and Professor Berman gives an excellent discussion of them.

The Arizona judicial system has a long and storied history beginning even before statehood, which Professor Paul Julien outlines in his article on the courts. He highlights major advances in our court system, including how active women were, and still are, in the Arizona judiciary. Professor Julien gives a detailed description of each branch of the judicial system, from the Supreme Court to Limited Jurisdiction Courts. In his descriptions he gives the reader a definition as well as who is influenced by the court and how individuals fit into the system at each level. He also offers an overview of what the daily business of the courts is and which level of the system is appropriate for a specific crime or other action.

This leads into a discussion on how important the courts are, not only to interpret the laws, but also as a source of revenue for the state. In economic terms the courts can provide one of the steadiest sources of income, which is helpful during an economic downturn. Another issue surrounding the court system is how judges are chosen for the bench. Professor Julien discusses two methods: merit selection and general election. Merit selection is becoming less and less utilized in favor of elections, which can politicize the otherwise non-partisan judicial branch.

The final section of Professor Julien's article is a discussion of how the courts are looking to the future and the Strategic Plan for 2020. This plan has five goals and each of these is defined and outlined, describing how these changes influence the citizenry. In addition, there are several aspects that the courts are going to have to address as we move to the future including integrating new technologies, maintaining accessibility for citizens in a diverse state like Arizona, and maintaining funding levels to be able to provide the necessary services.

One of the major complications in a federalist government structure is the relationship between levels of government. It is important to understand how state agencies work with counties and municipalities. Intergovernmental relations in Arizona are multifaceted. In her article on this topic, Dr. Tanis Salant explores the complex nature of Arizona's political and government systems, revealing an intricate, interlinked web. Our political system is a mixture of many governments where political power is both diffused and shared. But Salant points out that legally, state government supersedes county and local government authority—sometimes causing conflict.

In fact, the debate about where to draw the line regarding state authority over counties and municipalities is a highly debated topic. This subject embodies the push-pull of state-local relations, even though Arizona courts generally limit local power and authority. To even the playing field, counties, cities, and towns have created statewide voluntary organizations to represent their interests at the state Legislature, in the executive office, and with the courts.

Salant argues that fiscal issues related to the allocation of public resources are at the core of intergovernmental relations in Arizona. In order to clarify the intergovernmental relationships throughout the state, Salant suggests examining total public spending in Arizona. The most important thing to look for is which government branches receive benefits and increased funding; this shows what the state government favors. Finally, Salant stresses that even though the state is technically legally above localities, the municipal and county governments play the dominant role in providing services to Arizonans, making them key partners in the success of the state.

Like intergovernmental relations, Native American tribes have complex relationships with local, county, and state governments in Arizona. In her second chapter, Dr. Salant points out that while the federal government's relationship with Native American tribes is defined by the Constitution, states are generally left to define their relationship with tribes on their own—causing some confusion and difficulty. She argues that overall, judicial rulings, federal law, and tribal treaties have kept state jurisdiction on reservations to a minimum—making tribes more autonomous than other governmental organizations within the state.

However, she points out, there are several areas the state controls. Primarily, the state of Arizona controls all criminal and some civil jurisdiction on Native American land. The state also has provided public education and voting rights to Native people in Arizona. Even though there are obvious linkages, state-tribal relations are ever changing and are often complicated. Jurisdictional issues vary from tribe to tribe and issue to issue, and are often still being debated. However, Salant believes that relations between the state and tribes are increasing and one of the major reasons for this is the increase in tribal gaming revenues.

The state has become progressively more connected to the various tribes through two main tribal-state institutions: the Arizona Commission of Indian Affairs and the Intertribal Council of Arizona. Tribes contribute 1–8% of gaming revenues to state and local governments, creating funding for several departments and agencies. This funding stream, which provides resources for a wide variety of projects and grants, allows tribal relations with counties and municipalities to

be relatively positive since tribes are contributing revenue for a cash strapped state. In order to more fully understand the complexity of tribal relations to state government, Salant presents case studies on three different tribe types: rural, suburban, and urban. This discussion highlights the major challenges facing each type, along with the unique nature of tribal-state relationships.

Like Dr. Schlager, Kimberley Demarchi points out that elections (an Arizona institution) are always evolving and adapting to the current governmental and political atmosphere. Demarchi delves deeper into the nature of elections in the state, explaining thoroughly the election process. She points out that running for office is generally a long, complicated, and expensive procedure. Campaign finance plays a major role in the success or failure of a candidate; without proper funding a candidate cannot succeed.

Demarchi describes Arizona's Clean Elections Act—believed to be a step forward for election reforms—but also explains that problems with clean elections still remain, and further reforms must be made. Demarchi also champions an informed public and provides the reader with information about where details about candidates can be found. She explains that while information is usually valuable, it needs to be taken with a grain of salt until it is clear who is paying for it to be disseminated.

Next, Demarchi delves into how Arizonans can exercise their right to vote. She presents details about the two options for voters: mail-in ballots and in-person voting. She explores the numerous advantages and disadvantages of each type and produces several ideas for improvements, suggesting there is no solution that will be perfect for every Arizona voter. Furthermore, Demarchi explores the voters in Arizona, not just the process. She surmises that turnout depends on the type of election (general versus primary) and she offers several ideas on how to attract and encourage voters.

Civic Leadership

Engaging voters depends on whether or not a state has civic leadership. In a report prepared earlier this year for the Flinn Foundation, the Battelle Technology Partnership Practice defined civic leadership as:

> the capacity of a community to: identify, analyze, collaborate, and solve pressing societal needs and issues through the efforts of broadly engaged citizen organizations. Implicit in this capacity are two levels of engagement, where citizens with skills and commitment engage with others at the level of a community to address shared problems. Civic leadership requires talent development, organizational structures, and processes that develop and engage emerging and current leaders in community problem solving. Civic leadership is exercised by individuals but in a group/community context—local, regional, statewide, and beyond. Civic leadership is exercised by crossing boundaries (private, public, and non-profit sectors).[i]

As Arizona approaches its centennial year of 2012, it is clear that civic leadership in our state deserves greater support. We may be able to easily identify some of the many pressing issues we face—from workforce, taxes, and education, to immigration, energy, and healthcare—but we have struggled to work together effectively enough to unlock these issues' problematic features and find solutions.

If Arizonans are to meet the challenges we face, we must improve our system of preparing future leaders, such that they will have the knowledge, skills, and commitment to work together to devise and carry out long-term, pragmatic solutions to pressing problems. If we do not, the consequence will be diminished quality of life in our state. That is a consequence we cannot accept.

The difficulty that lawmakers have had in reaching common ground on our most urgent problems illustrates well the need to strengthen civic-leadership in Arizona. To be clear, we should expect and welcome impassioned debate over these issues; at its best, debate can clarify issues and help leaders reach broad agreement.

But often, we witness leaders struggling to surmount what Bruce Sievers has described as the problems of collective action and value pluralism.[ii] The problem of collective action, Sievers writes, centers on "the difficulty of achieving collective ends, even when there is common agreement about what those ends are, in the face of individuals' self-interested behavior." The problem of value pluralism concerns "the achievement of common purposes in a world of competing and often incompatible understandings of what those purposes are."

If civic leadership in Arizona is to grow stronger, Arizonans will drive that improvement. Our citizens are certainly dissatisfied enough with the status quo that it seems plausible that they would support leadership practiced in a different way. At the national level, as has been widely reported, confidence in government is at a nadir. The most recent "Confidence in Institutions" poll[iii] by the Gallup organization found that only 11% of Americans surveyed had "quite a lot" or a "great deal" of confidence in Congress, the lowest rating for that institution since Gallup initiated the poll in 1973. The U.S. Supreme Court and the presidency fared better, both at 36%, but each have slipped.

Arizonans have similarly shaky confidence in the leaders of our own state. The Gallup Arizona Poll, summarized in the Center for the Future of Arizona's 2009 report, *The Arizona We Want*,[iv] asked more than 800 Arizonans what single trait was the most important quality in an elected official. The top response, by a substantial margin, was "Understanding of complex issues." The next three responses, closely bunched, were "Commitment to work across party lines," "vision," and "willingness to listen." But are the people of our state getting what they seek in their leaders? Just 10% of respondents rated the leadership of elected officials where they live as "Very good." And only 10% strongly agreed with the statement, "Leaders in my community or area represent

my interest." In this startling dissatisfaction, there is an opportunity for Arizona to experience a renaissance in civic leadership.

The editors of this volume on the institutions of Arizona's government believe two things: first, having well-designed institutions that limit power, promote deliberation, and encourage compromise are extremely important for effective government; second, well-designed institutions are not enough. Well-designed institutions are a necessary but not sufficient condition for effective government.

For legislatures, executive branches, and courts to function effectively, there must be civic leaders who—through work in their communities, in state government, in the business world, and in nonprofit agencies—take the long view of what makes a successful state. This is the necessary condition for effective government.

What this means in practice is that for a state to be successful, there needs to be an educated and engaged citizenry, a sound public infrastructure that supports the economy of the state, and an openness to new ideas and people. At its heart, civic leadership is about stewardship—the obligation of the citizens of the greatest democracy in the world to pass on our state and country to the next generation better than we found them. It should be noted that this view of citizenship has an ancient history; it is embodied in the oath that every Athenian citizen took to pass on the city, not worse but better than he found it.

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[i] Battelle Technology Partnership Practice. "Phase 1 Civic Leadership Initiative: Final Report." March 2010.
[ii] Bruce Sievers. "What Civil Society Needs." *Stanford Social Innovation Review*. Fall 2010.
[iii] Gallup. "Confidence in Institutions." July 2010. Available at: http://www.gallup.com/poll/1597/confidence-institutions.aspx.
[iv] The Center for the Future of Arizona. "The Arizona We Want." 2009. Available at: http://www.thearizonawewant.org/report/index.php.

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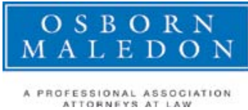

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