

September 25, 2020

Sheriff Joseph Dedman  
Apache County Sheriff  
PO Box 518  
St. Johns, AZ 85936

Commander Michael Cirivello  
Apache County Jail Commander  
PO Box 518  
St. Johns, AZ 85936

**BY E-MAIL**

Re: Disenfranchisement of Jailed Voters in Apache County

Dear Sheriff Dedman and Jail Commander Cirivello:

We write today in response to concerning reports we have received about the disenfranchisement of eligible voters in Apache County Jail and to ask that you take steps to remedy these issues before the upcoming November general election.

In Arizona, pretrial detainees and those serving misdemeanor sentences retain their eligibility to vote.<sup>1</sup> The Supreme Court affirmed that the state cannot deny these eligible voters access to the ballot in *O'Brien v. Skinner*.<sup>2</sup> Thus, it is well-established that Apache County has a constitutional obligation to ensure the eligible voters confined in your facilities have meaningful access to the franchise this November and beyond.

Despite the fact that jailed voters have a constitutional right to vote, casting a ballot while incarcerated can be very difficult. Jailed voters often cannot do so without third party assistance. As you know, jails maintain strict control of jailed voters' daily lives and dictate whether and how jailed voters can access information and make contact with others on the outside. As a result, jail officials play an instrumental role in determining whether jailed voters have access to the crucial election resources and timely assistance that they need in order to request and cast their ballots.

---

<sup>1</sup> See Ariz. Const. Art. 7 Sec. 2 (disqualifying only persons "convicted of treason or felony" from voting in Arizona).

<sup>2</sup> See *O'Brien v. Skinner*, 414 U.S. 524, 534 (1974).

We have received reports indicating not only that Apache County is failing to take the steps necessary to ensure jailed voters can access the ballot, but also that jail staff have actively impeded outside efforts to assist voters held in Apache County Jail. We believe that these actions threaten both voters' and our Coalition members' First Amendment rights, as well as voters' Fourteenth Amendment rights. Accordingly, we ask that your office take immediate steps to address these issues we outline and ensure that adequate protections are in place for this and future elections.

## **I. The Disenfranchisement of Voters in Apache County Jail**

### *Confiscation of Postcards*

This summer, the Arizona Coalition to End Jail-Based Disenfranchisement (members listed below) sent know-your-rights mailers to voters detained in Apache County jail in advance of the August primary. These postcards complied with all jail mail policies and regulations. The content of the postcards provided voters incarcerated in Apache County with information on how to vote from jail and a number they could call if they required assistance. Although we were able to assist one voter from within your jail to obtain his ballot, we received several alarming reports shortly thereafter.

Most worrying were two independent reports we received stating that Detention Officer Lucas Kuhl canvassed A Pod and collected the know-your-rights mailers from individuals who had received them, telling individuals that "the commander is going to try a different route." We also received reports indicating that the jail had not provided voters with the free, nonpartisan guides previously provided by the Clean Elections Commission. As a result, voters in the jail reported not having adequate information with which they could vote.

This is not acceptable. The law on this is clear. In Arizona, "a publisher has a First Amendment interest in distributing, and inmates have a First Amendment interest in receiving, unsolicited publications."<sup>3</sup> Thus, jails may only confiscate mail if doing so serves a legitimate penological purpose. Generally, confiscation of mail that complies with jail mail policies will not serve a legitimate penological purpose, unless the content of that mail poses issues to jail security or otherwise interferes with jail operations.<sup>4</sup> Here—where the mailer provided its recipients with information about their voting rights—it is clear that there would be no such issues with the content of this mailer. Therefore, when the jail confiscated these postcards,

---

<sup>3</sup> See *Hrdlicka v. Reniff*, 631 F.3d 1044, 1049 (9th Cir. 2011).

<sup>4</sup> See *Crime Justice & Am., Inc. v. Honea*, 876 F.3d 966, 973 (9th Cir. 2017).

it violated not only the rights of the recipients of the mailers within Apache County Jail, but also our rights as publishers.

Relatedly, the Arizona voters incarcerated in your jail require some basic information in order to exercise their constitutional rights to vote. That information includes when elections are, what the deadlines are to register to vote, how to request a ballot, information about what is on the ballot, and information about how to cast that ballot. By not making this information available to voters incarcerated in Apache County Jail, the Jail is imposing an unconstitutional burden on their right to vote.<sup>5</sup>

### *Failure to Provide Access to Registration Forms*

We have also received concerning reports indicating that Apache County is failing to provide adequate access to voter registration to people detained in your facility. According to these reports, Apache County Jail has set up a kiosk located in the dayroom intended to provide voter registration access. However, we have been told that the voter registration prompt on the kiosk, when selected, leads potential voters to a blank text box with no instruction and no way to begin the registration process.

The process of registering to vote from Apache County Jail should be clear, easy, and accessible to all. Voter registration forms and voter assistance should be readily available. A system that is confusing or frustrating, particularly one that presents as providing direct access, discourages potential voters from getting registered. We have already reached out to Apache County Sheriff Dedman to coordinate on making commonsense improvements to address this issue, but we have not received a response. We request that the Jail take steps to improve this procedure by September 28<sup>th</sup> in light of the upcoming October 5<sup>th</sup> voter registration deadline in Arizona.

Relatedly, we have submitted several requests to Apache County Jail requesting information about its policies and practices regarding voting in the Jail under Arizona's Open Records Law, Ariz. Stat. § 39-121, *et seq.*, and we have yet to receive any response. As members of your community, we have a right under the law to this information, and we have received it from many other jurisdictions. We again ask that you provide us the requested information, which will enhance our ability together to ensure jailed voters have the resources they need to cast their ballots this November and beyond.

---

<sup>5</sup> See *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

## II. Recommended Remedies

### *Ensure Jail Mail Policies Do Not Disenfranchise Voters*

We want to be clear: the mailers that were sent to the people incarcerated in your facility are allowed, and interfering with voters' ability to receive and utilize these resources is a violation of their and our rights. In the future, we demand you ensure that jail mail policies and procedures do not inhibit voting. This means ensuring that future informational mailers are delivered promptly to and remain with voters.

It's also critical that jail mail policies do not interfere with voting otherwise. Voters are frequently disenfranchised by jail bureaucracy and slow mail systems that delay election materials. To prevent this, we encourage you to expedite any election related mail and treat it as legal mail.

### *Collaborate with Partners to Provide Information to Voters Inside*

Beyond simply allowing incarcerated voters to retain possession of resources sent directly to them, jail staff should be actively working to make sure that jailed individuals have the resources they need to vote. This means making sure that voters are aware of election related deadlines, including the deadline to register to vote and request an absentee ballot; making sure that people detained in your facility are able to determine their eligibility and are aware of how to request an absentee ballot or voter registration application; and making voter education materials easily available.

You can do this by collaborating with partners and outside groups, including the Apache County Recorder's Office and the Clean Elections Commission, performing this work. The organizations in this coalition are eager to work with you to develop procedures that ensure straight-forward access to the franchise for incarcerated voters; you are encouraged to reach out to us.

### *Reform Voter Registration Procedures*

With respect to voter registration procedures, we recommend that you make immediate changes to your voter registration procedures. This can and should start with changing the prompt presented on the kiosk available in the common space by providing explicit options to the voters ("I'd like to register to vote" and "I'm registered; I'd like to request a ballot"). Arizona also offers online voter registration; voters should have the opportunity to register on site using this option and be given access to their state ID numbers to do so.

Beyond providing the kiosk, it's imperative that you make registration forms and ballot request forms available to every eligible voter. Not all incarcerated voters will

have the state ID required to register online. Counties across the country, including Graham County in Arizona, are bringing voter registration opportunities to jails by hosting in-person voter registration sessions or training jail staff to register voters. Proactive opportunities like this make it easier for voters to get registered and help increase awareness that voters have the option to vote from jail.

The reforms that you do implement should be done as quickly as possible in light of the impending October 5<sup>th</sup> voter registration deadline in Arizona. At minimum, you should make voter registration forms freely available by September 28<sup>th</sup> and coordinate with the Apache Recorder's office to allow direct delivery or pick up of all completed registration forms by October 5<sup>th</sup> to ensure registrations are fact processed in time and do not fall prey to mail delays.

### III. Conclusion

Apache County cannot continue to prevent eligible voters exercising their most fundamental right as Americans: the right to vote. Not only does state law allow for access to the franchise for eligible voters; the Constitution demands it.

We would be happy to work with you moving forward in the fight to make sure every eligible voter is able to cast their ballot. Thank you for your time and attention, and we look forward to working with you.

Sincerely,

The Arizona Coalition to End Jail-Based Disenfranchisement:  
All Voting is Local - Arizona  
Arizona Advocacy Foundation  
Arizona Center for Empowerment  
Arizona Coalition for Change  
American Friends Service Committee - Arizona  
Mass Liberation Arizona  
One Arizona  
Poder in Action  
Campaign Legal Center