



# NATIVE AMERICAN VOTING RIGHTS

## HISTORICAL BACKGROUND:

Throughout our history, there have been considerable obstacles to universal suffrage for Native American people, even those who bravely served in our armed services:

- In 1947 Miguel Trujillo, a Native American Marine veteran, sued New Mexico for denying him the right to vote. He prevailed and New Mexico was required to ensure all Native Americans the right to vote. This started a wave of states striking down provisions in their constitutions that banned Natives from voting.
- Even after their legal right to vote was irrefutably established, Native individuals still faced persistent barriers to exercise their right such as literacy tests, poll taxes, and rank intimidation. The passage of the Voting Rights Act in 1965, as with African-Americans, dramatically aided Native people in freely accessing the polls.

## Current Landscape of Native American Voting Rights:

While there can be no argument that Native American electoral participation has improved from the days when they were blatantly denied the right to vote, there remain, in practice, many barriers, some unique to Native communities.

- For Native voters living in rural areas, polling places can be extremely far apart and difficult to reach, especially those with limited transportation options. Certain Native voters in Montana, for example, faced a 200-mile round trip just to cast an early ballot. Not only is this inconvenient, but for the many Native individuals hovering around the poverty line, it acts as a modern-day poll tax. Fortunately, there are communities attempting to address these barriers. The Blackfeet Nation and the election officials from Glacier and Browning counties in Montana are taking ameliorative steps to make it easier for tribal and rural voters to vote, including by opening satellite locations.
- Voter ID laws are a significant barrier to tribal communities for a few reasons: tribal identification cards do not always meet state ID requirements for voting; there is a lack of DMV locations on reservations and in rural areas; and poll workers are often unfamiliar with tribal IDs and refuse to accept them at the polls. Members of the Spirit Lake Tribe, Sisseton-Wahpeton Oyate, and Turtle Mountain Band of Chippewa (both in North Dakota) are in an ongoing legal battle with the state legislature over an unnecessarily restrictive photo ID law (*Brakebill v. Jaeger*). In September 2016, a U.S. District Court determined the restrictive law unconstitutional and ordered the state to add exceptions to the law for those without proper ID. In turn, state lawmakers made changes to the law in spring of 2017, which ignored the judge's directive. The Native American Rights Fund and others are still fighting to change this law.
- Native voters are often disadvantaged in communities where poll workers do not speak native languages or election materials are only available in English. As the result of a 2015 lawsuit by the Togiak Traditional Council and others, the State of Alaska rolled out language assistance in over 100 communities across the state. This meant that any election information provided in English was also provided in Yup'ik, Inupiaq and Gwich'in. In certain communities, poll workers were provided Yup'ik glossaries with election-related words in seven regional dialects. Tribal leaders called this a victory toward making sure that every qualified voter is able to understand what they are voting on.

1. <http://mtpr.org/post/montana-special-election-brings-special-challenges-voter-access>

2. <https://www.narf.org/cases/nd-voter-id/>

3. <https://www.adn.com/politics/article/native-language-speakers-win-lawsuit-against-state/2014/09/03/>



## **Problems Affecting Native American Voters and Solutions:**

The DNC has partnered and will continue to partner with Native American communities to address continuing impediments to Native American voting. There are solutions and working collaboratively we can address the hindrances.

### **1. Where poll workers fail to understand the law and do not accept tribal IDs as valid.**

- Send an information sheet to county election offices that can be used as part of training and materials given to polling place workers. This would include parts of state code/election administration governing what needs to be included on a valid ID and sample tribal IDs so that poll workers are familiar with what the IDs look like.
- Provide literature that explains what rights voters have at the polls and provide them with a way to get help if they need it. For example, the DNC's Civic Engagement and Voter Protection Department runs a voter hotline where callers can report incidents where they are denied their right to vote or answer questions about voter access. The department has also created "Know Your Voting Rights" literature to distribute to voters ahead of Election Day.

### **2. Where polling places are unreasonably far away.**

- Work with campaigns and partners to create a "rides to the polls" program to make it easier for rural voters both Native and non-Native.
- Encourage voters to apply for and return mail-in absentee ballots.
- If your state has it, provide information on where and when early voting or absentee in-person voting is available so that they have more options than just on Election Day. If early voting is limited to a few locations, we can provide examples of communities that have successfully argued for more locations and extended hours.
- Determine if there are enough registered voters in one area to force the county to create a new precinct and polling location to serve them. This may involve organizing a voter registration effort to meet the threshold number of registered voters to require a new precinct.

### **3. Where a state fails to recognize tribal IDs as sufficient for voting purposes.**

- Educate voters on what requirements an ID must meet to be sufficient for voting purposes and precisely what documentation a voter needs to bring with them to the polls. Sometimes there are discrepancies between what the list of accepted IDs says and what the law actually requires.
- Organize within communities to get free voter IDs where available. Some states offer free IDs for those who do not have a valid form of ID. Some states even offer mobile ID services that can be scheduled to come to communities and provide IDs. You could even organize rides to get these free IDs.

### **4. Where there is a lack of post offices to turn in absentee ballots.**

- While some states have banned ballot collecting (for example, there is pending litigation in AZ), many allow third-party groups to collect absentee ballots and return them to the county election offices. After researching their own state's laws, community organizers can plan ballot collection drives to assist rural voters who may not have the means to return their ballots otherwise.

4. *Feldman v. Arizona Secretary of State's Office*, 840 F.3d 1057 (9th Cir. 2016)(Thomas, J., dissenting).

5. *Aida Chavez, For Voters on Reservations, Getting to the Poll Just the First Hurdle*

6. *Feldman* 840 F.3d 1057 at 395.



## LITIGATION ON BEHALF OF NATIVE AMERICAN VOTING RIGHTS:

**Feldman v. Arizona Secretary of State's Office:** The DNC is challenging Arizona H.B. 2023, which allows Arizona to charge individuals who deliver mail-in ballots on behalf of another person with a Class-6 felony. Under the law, only family members, household members, or caregivers are eligible to turn in mail-in ballots on behalf of voters. This especially limits the ability of voters in minority communities, voters in rural areas, and voters who lack access to transportation to exercise their right to vote. Arizona's restrictions on ballot collection place severe burdens on voters who may have trouble traveling to their polling place or mailing their ballots back. In his dissent, Chief Judge Sidney R. Thomas of the U.S. Court of Appeals for the Ninth Circuit stated that Arizona's law against ballot collection had "criminalized one of the most popular and effective methods by which minority voters cast their ballots." Although Republicans claim that the law is aimed at reducing voter fraud, there have been no instances of fraud due to ballot collection. Instead, by limiting how voters may submit their ballots, Arizona has made voter suppression the law. For example, the rural communities of Somerton and San Luis, AZ have populations that are over 95% Latino, but the community lacks home mail delivery. Before H.B. 2023, it was common for Somerton residents to pick up and drop off mail for their neighbors, however after the law, these voters are left with fewer options and their communities are unable to help. It is more crucial than ever in Arizona to ensure that voters have access to the ballot box by mail, and the DNC is working to protect that right.

Arizona's restrictions on ballot collection place a "severe burden" on the many Native American voters for whom mail-in voting is a necessity due to their "vast distance" from polling places. Due to the distance from polling places, with many Native voters having to travel several hours to vote, and the lack of access to transportation, mail-in voting is "critical in enabling voters...to exercise their fundamental right to vote." The Chief Judge specifically noted the difficulties that the law causes through examples of voters living on or near the Cocopah and Tohono O'odham Reservations, which do not have home mail delivery or easy access to a post office. Before H.B. 2023, "many rural residents on the reservation collect[ed] ballots from their neighbors and drop[ped] them off when they dr[o]ve to town," now, however, voters are left with fewer options and their communities are unable to help. Ensuring voters have access to the ballot box by mail is more crucial than ever in Arizona where, in Maricopa County alone, polling locations decreased from 200 to 60. In the 2016 presidential primaries, lines at the polls in Maricopa County, which is home to five reservations, forced voters to wait for over 5 hours to cast their ballots.

## DNC RESOURCES:

- Permanent National Voter Hotline: In 2017 we launched a permanent voter hotline at the DNC that's open and answered year-round. In addition to our normal hours, we expand the hotline's capacity when states request support on Election Days. We have DNC staff who are able to assist Spanish speaking voters. Call us at 1-833-DEM-VOTE (1-833-336-8683).
- IWillVote.com: This website is now a one-stop shop for registering to vote and updating your voter registration in every state. At a state party's request, we can add polling locations for upcoming elections.

***For more information about the DNC's Civic Engagement and Voter Protection Department, call us at 1-833-DEM-VOTE (1-833-336-8683).***

7. Victoria M. Massie, *Voting from a Native American Reservation is Much Harder than it Should Be*

8. See, Carrie Jung, *Native Americans Face Unique Barriers to Voting* (reporting that about 1 in 5 people on the Tohono O'odham Reservation don't have access to a car); Victoria M. Massie, *Voting from a Native American Reservation is Much Harder than it Should Be* (reporting that only 25 percent of households in the Navajo Nation have a car).

9. Feldman at 397.

10. Mike Lakusiak et al., *Native Americans Still Fight for Voting Equality*

11. Christine Stoddard, *Native Americans Are Still the "Invisible Vote." Here's Why*