Barriers Preventing Native American Access to the Polls

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Presenter

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About the Native American Voting Rights Coalition

• *Founded in early 2015*

• *A non-partisan coalition* of national, regional, and local grassroots organizations, scholars, lawyers and activists *advocating for the equal access of Native Americans to the political process*

• Facilitates collaboration between its members on *coordinated approaches to the many barriers that Native Americans face* in registering to vote, casting their ballot, and having an equal voice in elections
Organizations/Individuals Participating in Field Hearings: NAVRC Members

Professor Dan McCool (University of Utah)
Professor Patty Ferguson-Bohne (Arizona State University)
Professor Jean Schroedel (Claremont Graduate University)
James Tucker, Esq. (Pro Bono Voting Rights Counsel to NARF)
Why Have Field Hearings?
To separate fact from fiction on Native voting

“Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels.... The tests and devices that blocked access to the ballot have been forbidden nationwide for over 40 years....”

*Shelby County v. Holder*

(2013)
Why Have Field Hearings? Purposes of the Hearings

• The hearings help promote *public education* on voting rights in Indian Country.

• The hearings will play a critical role in development of and response to *public policy*.

• The hearings will assist in the pursuit of *other legal remedies* to expand opportunities for Native voters to participate in the political process (e.g., litigation).
Overview of the Field Hearings: Regions Covered by the Field Hearings

Field hearings were held in every region except Alaska, Hawaii, the Eastern States, and states without federally recognized tribes.
Some Issues Impacting Native Voting

- High poverty rate
- Isolating conditions
- Lack of resources and funding
- Residential features
- Non-traditional mailing addresses
- Voter ID
- Felony Disenfranchisement Laws
- Threshold Requirements for Polling Locations
- Distrust of Federal and State Governments
- Overt Racism
High Poverty Rate

• Socio-economic isolation

Native Americans have the highest poverty rate of any population group

AIAN poverty rate: 26.6 percent

Poverty rate of AIAN population is nearly double the national poverty rate

Poverty rate for Native Americans is highest on tribal lands: 38.3 percent

Median household income of single-race AIAN households in 2016 was $39,719, well below the national median household income of $57,617

The unemployment rate of AIAN population aged 16 and older is 12 percent

13.4 percent of all occupied AIAN households lacked access to a vehicle
Isolating Conditions

• Geographic isolation

Native voters live in some of the most remote areas of the United States

One third of the total Alaska Indian and Alaska Native (AIAN) population live in “Hard-to-Count” Census Tracts

“Hard-to-Count” Census Tracts include those Tracts “in the bottom 20 percent of 2010 Census Mail Return Rates (i.e., Mail Return Rates of 73 percent or less) or tracts for which a mail return rate is not applicable because they are enumerated in 2010 using the special Update/Enumerate method.”

1.7 million people out of 5.3 million people in the 2011-2015 American Community Survey estimates

Tremendous distances to get from tribal areas to urban areas
Isolating Conditions

- Physical Barriers
  
  Natural barriers isolate tribal lands
  
  Mountains
  
  Water (oceans, rivers, lakes)
  
  Canyons
  
  Poor or non-existent roads
  
  “Road conditions on both Navajo and Hopi reservations become tricky and dangerous in the wintertime causing expensive repair work on personal and school vehicles. The vehicles travel over deeply mud-rutted and pot-holed roads, which have been damaged by snow and rain, ruining and damaging wheel alignment and tires.”

NAVAJO-HOPI OBSERVER, December 16, 2014
Nye County Polling Places

- Identified by
- Four are located in the southern portion of the county
- Two polling places are in Pahrump
- Duckwater has no polling place – vote-by-mail only
- Closest polling places to Duckwater are:
  - **Round Mountain:** 360 miles roundtrip (180 miles each way by road)
  - **Tonopah:** nearly 300 miles roundtrip (about 140 miles each way by road)
Barriers to Casting a Ballot

• In-person voting opportunities are often inaccessible to Native voters living on tribal lands because of distance issues and lack of transportation

Example #1 - South Dakota: The polling location for the Crow Creek Reservation in South Dakota was established off-reservation in a non-Native community with just 12 voters

  The Crow Creek Reservation has a total population of over 2,200 people

  Buffalo County refused to establish an in-person voting location at Fort Thompson, the capital and major community on the reservation with a population of about 1,300 people
Isolating Conditions

• Linguistic Isolation

Over one-quarter of all single-race American Indian or Alaska Native people speak a language other than English at home

Two-thirds of all speakers of AIAN languages reside on tribal lands

Nationally, 357,409 AIAN persons reside in a county-level jurisdiction covered by Section 203 of the Voting Rights Act, which requires that language assistance must be provided for all phases of the voting process

Language assistance is required in 35 county-level jurisdictions in nine states

Alaska, Arizona, and New Mexico account for 87 percent of all American Indians and Alaska Natives who reside in an area required to provide language assistance in a Native language

“Cucukillruunga!”
I Voted!
Isolating Conditions

• Technological Isolation

The Federal Trade Commission estimates broadband penetration in tribal communities at less than 10 percent

Census Bureau’s Tribal Consultations:

“Some tribes reported that internet response is currently not a viable option for members…”

Connectivity was reported to be the greatest issue “in rural areas including Alaska, Navajo Nation, [and] Pueblos” in New Mexico

Even where broadband is available, many Native voters cannot afford to access it (e.g., no computer, inability to pay for broadband access)

The digital divide is also a generational problem in Indian Country

Younger Native voters are more likely to go online to use voting resources

Resources often are not accessible to Elders
Isolating Conditions

- Technological Isolation
• Increasingly, states are moving to online voter registration
  • According to the National Conference of State Legislatures (NCSL), as of December 2017, a total of 37 states and the District of Columbia offer online registration

• States tout the savings from online voter registration
  • Arizona reported that it costs an average of 3 cents to process online voter registration applications, compared to 83 cents per paper registration form

• The hearings showed that at least one of NCSL’s findings is not accurate since NCSL reported that “[i]n all states, paper registration forms are available for anyone, including those who cannot register online” but we received reports at some hearings that Native voters are restricted in how many paper forms they can submit in states with online registration

• Native Americans have unequal access to online voter registration due to lack of broadband and device

• Access to online voter registration is not available on many tribal lands due to:
  
  Lack of broadband penetration

  Inability to afford cost of Internet connection

  Lack of access to computers or smartphones

  Digital divide, especially among tribal Elders

• Paper voter registration forms need to be provided and made readily accessible to potential Native voters living on tribal lands

• Local election offices need to conduct regular in-person voter registration drives on tribal lands

• Local election officials must allow organizers to submit all completed voter registration applications they receive
Lack of Resources and Funding

- County and local governments deny basic resources to constituents living on tribal lands
- Tribes and Tribal members often must engage in self-help to get the most basic voting services that non-Natives take for granted
  
  **Example #1:** Alaska authorized early voting locations in dozens of Alaska Native villages only after the tribal governments agreed to provide volunteers who were not paid the same rate as election workers at existing urban early voting locations
  
  **Example #2:** New Mexico Zuni rented a recreational vehicle in 2012 to use as a mobile polling place to improve voter access, but discontinued it because there were no funds for the next election

- Limits voter registration drives
- Limits ability of tribal governments to prepare their own voter information guides, even though those guides are very effective at educating voters
Fewer Resources Expended on Voter Registration

- Native Americans have unequal access to in-person registration opportunities
- Unequal funding for voter registration efforts on tribal lands
  - Permanent voter registration sites, at county clerk’s offices, elections offices, or Department of Motor Vehicle sites, are too distant for Native voters (many of whom lack any form of reliable transportation)
  - Few election offices have permanent satellite voter registration locations on tribal lands, even where there are large populations of voters
    - Local jurisdictions deny requests for satellite offices due to claimed lack of funding
    - Satellite offices are denied even when Tribal governments have departments and offices that would be designated as NVRA sites if they were branches of a non-tribal government
- Few election offices recruit, train, and pay tribal members to serve as deputy voting registrars on tribal lands
- Failure to provide voter registration opportunities at polling places on Election Day
Residential Features

• Native Americans have a lower rate of home ownership than other population groups
  According to the 2016 American Community Survey:

  63.1 percent of the total population owns their own home

  52.9 percent of all single-race American Indian and Alaska Native householders own their own home

  It is common for multiple families and adult family members to share a single household

• Multiple people and families often use the same mailing address

• Native voters often maintain multiple mailing addresses

  Native voters living off reservation (often in urban areas) may maintain an address on the reservation to be able to vote in tribal elections

  Makes it difficult for many Native voters to register to vote or vote-by-mail
Residential Features

• Native Americans have higher rates of homelessness than other population groups – although they only comprise 1.2 percent of the total population, they comprise:
  4.0 percent of all sheltered homeless persons living in emergency or transitional housing
  4.0 percent of all homeless individuals (people who are homeless in their own right, and not as part of a homeless family)
  4.8 percent of all sheltered homeless families
 Urban Indians also face disproportionately high rates of homelessness

• Native Americans experience higher rates of homelessness among veterans than other population groups
  Only 0.7 percent of all veterans are American Indian or Alaska Native
  But Native Americans comprise 2.5 percent of all sheltered, homeless veterans (about 3.5 times their percentage of all veterans)
Residential Features

• “Couch surfing” is common, especially among younger Native Americans

• According to the 2016 American Community Survey, 15.5 percent of the American Indian and Alaska Native population was residing in a different home than the one they reported a year earlier

• In 2017, for the 11,000 members of the Northern Arapaho Tribe in Wyoming
  There were just 230 reservation homes (averaging nearly 48 people per home)
  55 percent of Tribal members were considered homeless because they are couch surfing

• HUD found that if couch surfing did not occur in the Navajo Nation, between 42,000 and 85,000 Navajo people living on tribal lands would be homeless
Non-Traditional Mailing Addresses

• The Census Bureau defines non-traditional mailing addresses as “noncity-style addresses,” such as “those that do not contain a house number and/or a street name.” Examples include:
  General delivery
  Rural route and box number
  Highway contract route and box number
  Post office box only delivery

• Non-traditional mailing addresses also include:
  Location descriptions such as “Brick House with Attached Garage on Right”
  Structure points (geographic coordinates)
    One of the witnesses testified that the use of coordinates, such as latitude and longitude, often do not match up
    A single set of coordinates often can misidentify a cluster of homes as a single home
  Census geographic codes such as state code, county code, census tract number, and census block number
Non-Traditional Mailing Addresses

• Why do non-traditional mailing addresses matter?

They make it harder to enumerate (count) Native Americans in the Census
Native voters who use them may be precluded from registering to vote, or it can
make it much more difficult for them to register to vote
Mail delivery is often delayed, including when vote-by-mail ballots are returned,
because the mail has to be routed to distant cities before going to the County
office
  Example: Navajo witness testified that when they return their ballot, instead of going
  straight to the Coconino County elections office in Flagstaff, it is routed through Phoenix
  Can lead to voter disenfranchisement if the ballot is not returned early; mailing it on the
day of the Election does not guarantee it will be received on time
Native voters often do not have ready access to mail delivered to a non-traditional
mailing address
Native voters may check their mail infrequently (going once a month or longer in
between checking it), delaying the receipt of critical election information
A single residence with multiple families of registered voters may receive only one
voter information pamphlet
Non-Traditional Mailing Addresses

• Mailing locations are not as accessible for Natives on tribal lands as they are to non-Natives off tribal lands

  Mailboxes, post office boxes, and postal services are often great distances away from where Native voters live

  Native voters often share their mailboxes or post office boxes with many other family members or tribal members, and may not receive their mail in a timely manner

  ”Voting centers” where mail-in ballots can be dropped off are all off reservation

• Washington State witnesses testified that although they have a post office on their reservation, that post office closes at 3 p.m. on Election Day and the mailbox to drop off their ballots is inside the post office

• Arizona election officials testified that because of delays in routing ballots returned from rural tribal areas through an urban processing center, it is possible a mailed ballot would not be received in time to be counted
Non-Traditional Mailing Addresses: How they can lead to disenfranchisement

- **Example #1 (South Dakota – from the Bismarck, ND field hearing):**
  Tribal members living on Crow Creek Indian Reservation in Buffalo County, SD have difficulty registering to vote because they use non-traditional mailing addresses. Efforts were undertaken to align residential locations with County’s 911 system, but it has not resolved the barrier faced by many Native voters. Many families of voters share a common P.O. Box, rural route box, or have no street address associated with their home.

- **Example #2 (North Dakota – from the Bismarck, ND field hearing):**
  State initially refused to accept tribal identification cards for voter registration. After the state law was enjoined, the State enacted a new law that allow use of tribal identification cards as long as they provide a physical (traditional residential) address. Most Native voters do not have a residential address because of their use of non-traditional mailing addresses.
Non-Traditional Mailing Addresses: How they can lead to disenfranchisement

• Example #3 (Washington State – from the Portland, OR field hearing):
  Many voters on the Colville and Yakama Reservations cannot register to vote to participate in Washington State’s vote-by-mail system
  It is commonplace for tribal members to use a post office box that cannot be readily correlated with the physical address where they actually live

• Example #4 (Southern California – from the San Diego, CA field hearing):
  Witness from the Torrez Martinez Desert Cahuilla Indian Tribe, located west of the Salton Sea, could not register to vote because they had a non-traditional mailing address
  It was only through the intervention of a family friend running for non-tribal office that allowed the voter to get a waiver of the requirement to be able to register to vote
  The witness testified that many tribal members would not take the time to go through an appeals process to be able to register to vote
- Lack of traditional mailing addresses are a barrier to registering
- Homelessness and housing instability are a barrier to registering
• Voter purges disproportionately affect Native Americans

![Image of a mail box with a voided ballot]

• Even after voters with non-traditional mailing addresses are registered, they may still be purged because of those addresses

**Example #1 (Apache County, AZ – Phoenix AZ Field Hearing)** In Apache County, Arizona, the County purged 500 Navajo voters in 2012 because the County Recorder claimed their addresses were “too obscure” and the Recorder claimed they could not be assigned to a precinct. The County Recorder failed to accept a PO. Box and the applicants’ drawing on the voter registration form to show the location of their home

• In places covered by Section 203, information about voter purges is not provided in the covered Native language
• Once purged, many Native voters won’t vote again in non- Tribal elections
• Many Native voters vote infrequently in non- Tribal elections, causing their registration to be purged if they do not respond to a NVRA notice
Voter ID

- Voter ID laws impact registration and same-day or (no registration voting in North Dakota) because Native Americans are substantially less likely to have qualifying ID.
Voter ID

- Socio-economic barriers to obtaining identification
  
  DMV location or other state offices where ID can be obtained often are vast distances from tribal lands
  
  Lack of transportation
  Cost of driving to office
  Inconvenience/time lost to make roundtrip drive that may take several hours
  Cost of paying for identification

- Native voters who lack proper identification when they try to vote may be unable to return to their polling place before it closes with the proper ID

Turtle Mountain tribal member Elvis Norquay receives a free tribal ID at a mobile ID station the day before Election Day 2018
Felony Disenfranchisement Laws

- Native Americans are disproportionately impacted by felon disenfranchisement laws, even when eligible to vote.

- Minor crimes often used as a vehicle to disenfranchise Native voters through overcharging at disproportionate rates

- Even in states such as California where civil rights are automatically restored after completing the sentence or terms of parole, Native voters remain disenfranchised

  Parole officers inaccurately inform Native parolees that they cannot register to vote even after their sentence is fully served

  The State of California does not inform previously convicted felons who have served their terms that they are eligible to register to vote
Threshold Requirements Disenfranchise Native Voters

• State laws give discretion to eliminate polling places where voter thresholds are not met and are widely used on tribal lands.

• **“Not enough registered voters”**: Laws in many states give county clerks the discretion to designate precincts in rural and tribal areas as all vote-by-mail if they do not meet a designated threshold of registered voters.

• **Example #1 - Nevada (N.R.S. § 293.343)**: “A registered voter who resides in an election precinct in which there were not more than 200 voters registered for the last preceding general election, or in a precinct in which it appears to the satisfaction of the county clerk and Secretary of State that there are not more than 200 registered voters, may vote at any election regulated by this chapter in the manner provided in NRS 293.345 to 293.355, inclusive [that is, a vote-by-mail precinct].”

  Creates a vicious cycle: vote by mail depresses voter registration rates on tribal lands, making it even more difficult to surpass the 200 voter threshold for a required in-person voting location.

  County clerks in Nevada overwhelmingly exercise this option for precincts on tribal lands.
Threshold Requirements Disenfranchise Native Voters

• State laws give discretion to eliminate polling places where voter thresholds are not met and are widely used on tribal lands (cont.)

• Example #1 (cont.) - Duck Valley Shoshone-Paiute

  Tribal elections typically have approximately 700 voters voting in tribal elections.

  Just 147 Tribal members were active voters in Elko County, Nevada in the 2016 General Election, a registration rate of just over 18 percent of the eligible Tribal members of voting age.

  In 2016 General Election, the turnout rate among the registered voters was just 42 percent, compared to countywide average turnout rate of 55.6 percent.

  2016 General Election turnout of all Tribal members eligible to register to vote was just 7.6 percent.

• Example #2 - Tule River Tribe, Sacramento Field Hearing

  California Elections Code § 3005(a) permits registrars of voters to designate precincts with fewer than 250 voters as vote-by-mail.

  Tule River Tribe struggled for years to exceed threshold despite sufficient eligible voters and was just informed that starting in 2018 the tribe will have an in-person voting location following a sustained registration effort.
Redistricting Issues

• Redistricting practices have been used to prevent Native voters from electing their chosen candidates – examples:

  San Juan County, Utah: Native voters were packed primarily into one district even though they were sufficiently numerous to comprise majorities in two out of the three County Commission districts

  Washington State Redistricting: The State Redistricting Commission fractured (“cracked”) the Colville and Yakama Reservations, dividing them into two separate state legislative districts

    Native voters were excluded from the redistricting process – Washington State witnesses testified that non-Natives claiming to have Native ancestry took their seats at the table

    Traditionally, each of the reservations should have been maintained in the same district

• Denial of equal opportunities to elect results in denial of opportunities for Natives to serve on appointed bodies
Distrust of Federal and State Governments

- Distrust towards non-tribal governments (federal, state, and local governments)
  - Out of 2,800 Native voters interviewed in Arizona, Nevada, New Mexico, and South Dakota, tribal governments were the most trusted
  - Trust in the federal government ranged from a high of 28 percent of Native voters in Nevada to a low of just 16.3 percent in South Dakota
  - Distrust and anger towards the federal government has increased through recent actions like Bears Ears, the Dakota Access Pipeline, and the Keystone XL Pipeline
“... the education has to go both ways. If Americans expect Native Americans to buy in and want to participate in these colonial process of governance, they have to show us that we are worth a damn to them, right, which is not the case. Hasn’t been the case.” Mr. Rydberg, Sacramento Field Hearing April 5, 2018.

- Impact of the government-to-government relationship on voting

  Concern that participating in non-tribal elections will negatively impact tribal sovereignty

  Some Native voters view themselves only as citizens of their own tribal government, not of federal, state, or local governments that engaged in genocide, cultural war, and discriminated against Native peoples.

  Greater focus on Tribal elections because of the direct democracy and more representative government that they provide.
A Few Examples of Overt Racism

• In South Dakota, voters were forced to vote in a repurposed chicken coop
• In Arizona, voters were forced to travel to the boarder city where racial tensions were so fraught that the pipes sending water to the reservation were regularly blocked
• Consistent testimony that police were used to intimidate voters – heavy police presence checking plates leaving the reservation on Election Day. In Wisconsin, polling location placed inside of sheriff’s office
• In Montana, county official would complain upon receipt of registrations and there were many suspicious errors in tribal registrations. Number of registration cards given to Native community organizations was arbitrarily limited
• In South Dakota poll workers would fall silent and stare when a Native American entered to vote
Sheriffs are out here HOT!
They been hot on the road from the Rez into DL!
Y’all better watch out, they’re trying to take as much natives as they can off the road and into the clinker so you CANT VOTE!!

I’m tellin you, if you need a ride I gotchu!
I also got a license and insurance lol 🤷‍♀️
“Every time we take a stack of reg cards in there, we get dirty looks. And I’m pretty sure some of them go into the garbage, you know . . . . They hassled us about us bringing in too many voter reg cards. So in 2014, they brought it down to where we can only bring 70 in.”

Erica Shelby - Flathead Reservation, Montana
Bismarck Field Hearing
September 5, 2017
Questions?