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MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation

U.S. House of Representatives Committee on House Administration Subcommittee on Elections

**Field Hearing on Voting Rights and Election Administration in the Dakotas
April 16, 2019**

Testimony of the Mandan Hidatsa and Arikara Nation

Introduction

Good morning Chairwoman and Members of the Subcommittee. My name is Roger White Owl. I serve as the Chief Executive Officer for Chairman Mark Fox of the Mandan Hidatsa and Arikara Nation (MHA Nation). Thank you for the opportunity to testify as a part of this important hearing on “Voting Rights and Election Administration in the Dakotas.”

The MHA Nation is located in western North Dakota. Our Fort Berthold Indian Reservation encompasses a major part of the Missouri River. The Missouri River has always been are part of our homelands and a central part of our culture, traditions and economic livelihood. The Missouri River and its bottomlands provided the MHA Nation with plentiful fish, wildlife, agriculture lands, building materials, trade routes and shelter from the winter winds and cold. We originally reserved these lands through a series of treaties, agreements and Executive Orders with the United States beginning with the 1851 Treaty Fort Laramie.

Impact of State Election Laws on the MHA Nation

Today’s hearing is about how America’s first inhabitants are treated in the election systems of the United States. I am a citizen of the MHA Nation and I vote in our tribal elections. I am also a citizen of the United States and I have proudly served, as many many tribal members do, in the United States military. Yet, in the United States, I do not have the same right and ability to vote as other United States citizens.

This is unfair and must be corrected. We have a treaty, trust and government-to-government relationship with the United States, but this is not upheld in the area of elections. Instead, the MHA Nation and its citizens are required to vote according to state laws that are not designed in consultation with us and to address unique issues on our Reservation. This is wrong and suppresses the tribal vote.

The impact of suppressing tribal voices in elections is far reaching. Even today the MHA Nation and other Indian tribes are impacted by laws, policies and decisions at the federal level that are not in our best interest. We reserved our homelands in treaties with the United States, but almost every day since we have had to fight the Federal government and the State of North Dakota for control of our lands and to fully benefit from our resources.

The MHA Nation asks that the Subcommittee raise this issue of unfairness and disenfranchisement to the highest levels of House leadership. The MHA Nation and other Indian tribes should be working directly with the Federal government to determine how elections will be held on our Reservation. We should determine with the Federal government what the registration requirements will be for tribal voters. We should determine with the Federal government how many polling places will be on our Reservation and where they will be located. North Dakota is not a part of our federal-tribal government-to-government relationship and has no business passing laws that effect the vote on our Reservation.

After we worked so hard to elect former Senator Heidi Heitkamp, a friend to North Dakota's Indian tribes, the State knew that it could not let that happen again. In 2017, the North Dakota Legislature enacted House Bill 1369 a voter ID law that broke with established practice and went far beyond national voter ID norms. House Bill 1369 required all voters to present an ID with a "residential street address in North Dakota."

North Dakota was ultimately able to enforce this law against the MHA Nation and other tribes even though neither the Federal government nor its Bureau of Indian Affairs (BIA) ever established or supported establishing residential addresses on our rural reservation. If state laws did not apply to tribal voters, the Federal government and the BIA could have worked with us to establish sensible voter ID requirements for the MHA Nation. Working together we could have ensured that all tribal voices and votes would be heard.

This state law barely survived scrutiny by the courts, but it was ultimately upheld and limited our members access to the polls. In a case known as *Brakebill, et. al. v. Jaeger*, the tribes in North Dakota challenged the law. First, on April 3, 2018, the Federal District Court in North Dakota prevented application of North Dakota's law. Citing North Dakota's knowledge that many Indian reservations do not have residential street addresses, Judge Hoveland determined that requiring individuals to have a current residential street address was a clear legal obstacle that would inhibit the right to vote.

While this District Court's decision was initially upheld, eventually the Eight Circuit Court of Appeals upheld North Dakota's voter ID law on September 24, 2018, even though it was on the eve of the election and early voting had already occurred. On October 9, 2018, the United States Supreme Court refused to overturn North Dakota's law even though having different laws in effect at the primary and general election was going to cause confusion for voters—specifically for Indian voters lacking a current residential street address.

Once again, the MHA Nation was forced to bear the burden of federal laws, policies and decisions giving improper authority to the State over elections on our Fort Berthold Indian

Reservation. The MHA Nation has approximately 16,306 members. About 5,686 of our members are voting age and live on or near the Reservation. Until 2016, the MHA Nation allowed tribal members to list a P.O. Box as their address on their tribal ID cards. On parts of our Reservation, the homes do not have street addresses assigned.

Following the decision by the Eight Circuit and United States Supreme Court, the MHA Nation stepped into action and began allowing tribal members to exchange their IDs with P.O. Boxes for new IDs with residential street addresses free of charge. About a week later, the MHA Nation began issuing new free tribal IDs to tribal members for any reason. We wanted to ensure that everyone who wanted to vote could vote.

Our efforts to provide voter ID cards that complied with North Dakota law were slowed by a lack of staff resources to do this unexpected work and distances separating our communities. Not to mention a complete lack of support from the Federal government—our federal trustee. Some tribal members had to drive for hours just to get a new ID card. We had just two staff members available to provide new tribal IDs and they were overwhelmed with the need leading up to the November 2018 election. Every day, especially during lunch breaks, there were long lines of people waiting to receive new IDs.

Between the time of the Eight Circuit decision and the November 6, 2018 election our Tribal Enrollment Office issued 456 new IDs to tribal members. Normally we issue about 150 to 200 IDs a month. This burdened our system, limited our ability to provide other important services to tribal members, and the MHA Nation absorbed the cost of issuing these IDs. We estimate the about 75 to 80 percent of the tribal members who received a new ID during this time did not have another form of ID that would have complied with North Dakota's law. Even with all of this additional work, about one-third of our members still do not have a tribal ID.

In addition, many of the current residential addresses that we used to make these IDs may not be accurate in future years. About one in four tribal members who came in for a new ID did not know their residential address. In many cases we could not identify an address for someone even when looking at a map of their house. Or, they may have given me a family member's house address where they are currently staying. This is not voter fraud. This is the result of unworkable state laws being applied to our Reservation.

In addition to issuing IDs, the MHA Nation put out information on voting requirements, and issued letters to tribal members that could be used in place of an ID. All of this extra effort was needed because of the new North Dakota law and back-and-forth court decisions leading up to election day. We were not able to count the number of tribal members who never received a new ID or were discouraged from voting or were unable to vote due to North Dakota's new law.

We also provided buses to bring voters to the polls. Buses were necessary because, in addition to everything else, two polling locations were shut down and some members had to travel 30 to 45 miles on Election Day to vote. We have a long way to go to make voting accessible and fair and taking into account tribal needs. This is not how it should be in the United States.

Conclusion

The MHA Nation has a treaty and government-to-government relationship with the United States. The United States has a trust responsibility to protect the MHA Nation's tribal homelands and promote tribal self-determination. Despite all this, we are required to vote according to North Dakota's requirements. These requirements were not developed in consultation with us. In fact, they were specifically developed to suppress and disenfranchise the vote of tribal members.

The Subcommittee must raise this issue to the highest level of House leadership and pass laws that will protect and promote our right to vote. After all we have contributed and still contribute to the United States, the MHA Nation and its voters must not be denied the ability to vote by state laws. It is time for the Federal government to fulfill its treaty and trust responsibilities and enact federal laws that provide adequate polling places on Indian reservations and use voter identification requirements that work for tribal members.